(1) Supreme Court, U.S.
FILED
06-103 JUL 20 2006
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

FRANCIS J. ROBINSON,

Petitioner,

v.

SUNBEAM CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

FRANCIS J. ROBINSON
832 Milmar Road
Newtown Square,
Pennsylvania 19073
(610) 356-3382
Petitioner Pro Se.

Washington, D.C. • THIEL PRESS • (202) 328-3288

QUESTIONS PRESENTED

1. Will this Court use its power under Supreme Court Rule 10(a) to prevent the Second Circuit Court of Appeals from ignoring the voluminous facts of record and approving multiple acts of violations of multiple Federal statutes by named co-conspirators in carrying out a massive fraud to deprive legitimate stockholders of their equity interests in a listed corporation and transferring new stock and all the corporate assets to themselves?

2. How could the Second Circuit Court of Appeals ignore and refuse to even consider any of the uncontradicted and proven facts of record showing that the Bankruptcy Court lacked statutory authority to confirm the Plan of Reorganization and that there was a proven conspiracy to defraud Sunbeam stockholders in a contrived and planned "bankruptcy" that never was?

3. Will this Court permit the Second Circuit Court of Appeals to ignore the specific wording of a Federal statute, ignore conflicting Circuit Court decisions, including one of its own panels in this case, and then attempt to hold that this panel's Summary Order cannot be used as precedent, "but may be called to the attention of this court in a subsequent stage of this case, in a related case, *or in any case for purposes of Collateral Estoppel or Res Judicata*", whether criminal or civil, thereby sending a message to the U.S. and world stockholders that the U.S. Federal Courts will not protect their investments in this country's corporations, at least in the Second Circuit? (Emphasis added).

4. How could the Second Circuit Court of Appeals ignore the fact that this was never a case of mootness, but a case from the very outset of Robinson's Notice of

Appearance in Bankruptcy Court a class action of Conspiracy to Defraud Sunbeam stockholders, fully litigated and the facts never controverted or even considered, and then use mootness by that Court as a pretext to avoid a decision on the merits after such a decision was directed by its own earlier panel in this case?

5. Since Petitioner is calling the Second Circuit's Order to the attention of this Court, as that Circuit Panel has "permitted", will this Court now recognize that Order in this subsequent stage of this case or in *any* related case, whether civil or criminal, for purposes of Collateral Estoppel or Res Judicata?

6. Considering question 5 above, what message will allowing the Second Circuit's Order to stand send to future corporate executives and others such as those involved here and similar to those in the recent *Enron* case, particularly where in this case the stockholders' losses can be recovered for them, the corporation restored to a strong financial condition, and with all the benefits of having had a class action already litigated on liability without an army of lawyers walking away with the major part of the recovery?

LIST OF PARTIES

Sunbeam Corporation and Petitioner are listed in the caption. Bank of America, Wachovia and Morgan Stanley, represented by Simpson, Thacher & Bartlett, while denying they are parties to this litigation, have been *de facto* parties throughout this entire bankruptcy proceeding and have been treated as such and served with all papers as such by Petitioner.

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PETITION FOR WRIT OF CERTIORARI

Francis J. Robinson respectfully petitions for a Writ of Certiorari to review the Summary Order of the United States Court of Appeals for the Second Circuit in Docket No. 04-1381-bk.

OPINION BELOW

The Summary Order of the U.S. Court of Appeals for the Second Circuit is reprinted in the Appendix ("App.") beginning at App. A, p. 1a.

JURISDICTION

The Second Circuit Court of Appeals entered judgment on April 26, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTE INVOLVED

Section 1129, (11 U.S.C. 1129) states:

1129. *Confirmation of Plan.*

(a.) The Court shall confirm a plan only of all of the following requirements are met:

(1) The plan complies with the applicable provisions of this title.

(2) The proponent of the plan complies with the applicable provisions of this title.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

* * *

(7) With respect to each impaired class of claims or interests

(A) each holder of a claim or interest of such class –

(i) has accepted the plan; or

(11) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under Chapter 7 of this title on such date;

STATEMENT

Jerry Levin was CEO of Coleman and Executive V.P. of MacAndrews & Forbes when they sold Coleman and other Subsidiaries to Sunbeam. He testified at both his deposition and at the Confirmation Hearing that he "knew that Sunbeam was rendered insolvent at the very moment that it incurred the bank debt and undertook the acquisitions" and did not believe "it was a viable enterprise going forward from that moment." (Tr. p. 278).

While still CEO of Coleman, and before consummation of the sale, he had a series of blank notes to Sunbeam dated dated April 6, 1998, executed by him and other officers of Coleman and its subsidiaries. After taking over as Chairman and CEO of Sunbeam, he transferred $2.252 billion in cash from Sunbeam to Coleman and other subsidiaries of Sunbeam and Coleman and carried that total amount as debt on the books of Sunbeam (Tr. pp. 270-274) These were the same subsidiaries later "transferred" out of the Chapter 11 proceeding, with the accompanying cash, by Judge Gonzalez with the concurrence of Judge Chin, after the Confirmation Hearing and

while the appeal was pend[illegible]efore Judge Chin. (App. J, pp. 68a-70a).

Immediately after taking over as CEO of Sunbeam, Jerry Levin wrote down the value of Coleman on the books of Sunbeam by $1.1 billion, First Alert by $62.5 million, and sold Eastpack back to MacAndrews & Forbes (M&F) at a $52 million loss two years later. (App. I, p. 54a). On August 12, 1998, he entered into an agreement with M&F pursuant to which the Company was released from certain threatened claims of M&F and its affiliates arising from the acquisition of Coleman and M&F agreed to provide "certain management personnel and assistance" to Sunbeam in exchange for "certain warrants to purchase Sunbeam stock expiring in August, 2003." Levin was also Ex. V.P. of M&F at that time.

In cover letters of May 14, 1999 and May 11, 2000 to the Sunbeam Annual Report to Stockholders and the SEC, Jerry Levin withheld his knowledge of the planned bankruptcy and instead presented a glowing picture of the past and future of Sunbeam's business (Ex. B to App. 1a to Robinson Motion to Vacate in District Court; App. I, pp. 55a-56a).

In January 2000, long after he testified he knew that Sunbeam was going to be taken into bankruptcy, he had Sunbeam purchase the remaining 19½% of Coleman stock from M&F for $146 million in cash. He was still Ex. V.P. of M&F at that time. (App. brief, App. 1a, Ex. A, Annual Report of Sunbeam for 1999, p. 22; App. I, p. 55a)

It is clear from the admissions of Harvey Miller (Tr. pp. 4-7) and the testimony of Jerry Levin throughout his deposition and the Confirmation Hearing that the banks and Morgan Stanley were parties to and controlled

the Chapter 11 proceeding from the outset. See particularly Levin's admission under cross examination at pages 289-290 of the Transcript and his testimony as to his compensation and benefits negotiations (App. I, 56a-58a).

That the banks and Jerry Levin controlled all the proceedings is further made unquestionably clear in the November 25, 2002 transcript of the *ex parte* "Hearing" held after completion and closing of the Confirmation Hearing on the evening of November 20, 2002, the latter of which was held without any notice to Robinson and run by counsel for banks and Morgan Stanley and for the Creditors' Committee. (App. I, pp. 52a-53a; App. O, pp. 82a-87a).

The principal issue in this case is whether the Bankruptcy Court, the Federal District Court, and the latest panel of the Second Circuit Court of Appeals have acted in a legal, equitable manner, or have "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory powers." (Supreme Court Rule 10(a))

The principal action of personnel in the Clerk's Office that is of concern is the fact that after Robinson's brief and appendix in this case was filed on November 17, 2004, there was nothing heard from Debtor's counsel or the Court until over 5 months later when Robinson received a copy of a Notice of Motion for Extension of Time which had earlier been refused for filing and replaced with a Motion for Reinstatement. At the bottom of the refused for filing Motion for Extension of Time, there was a statement signed by the Motions Staff Attorney stating that "IT IS HEREBY ORDERED

that the Motion to Reinstate Appeal is denied." (App. D, pp. 10a-12a)

It was after this that Robinson wrote directly to the members of the panel then involved, sending each member copies of the brief, appendix, Motion to Reconsider and other documents which it appeared obvious that the Court had not seen. (App. G, pp. 24a-34a). It was after another letter to the same panel on November 11, 2005, that the Motion for Reconsideration was granted. This second letter had gone into some detail concerning the class action nature of this case and the fact that the class had already been defined and established by Debtor and the banks as being the entire class of Sunbeam stockholders whose stock was being voided and the new stock issued to the banks and Jerry Levin and his management team. (App. H, pp. 39a-47a).

It has been over 45 months since Robinson filed, on September 13, 2002, a NOTICE OF APPEARANCE AND OBJECTIONS TO PROPOSED LOOTING OF LEGAL OWNERS SUNBEAM COMMON STOCK (App. H. pp. 42a-49a). In that LOOTING document, it was stated:

> "It was not the purpose of the bankruptcy laws to use the equity of the stockholders to pay off the debts of the corporation. The law provides for liquidation of the *assets* of the corporation to pay the debts, with any remainder going to the stockholders. The law does *not* provide for liquidation of the *stockholders.*" (App. H, p. 46a).

It was made quite clear to counsel for Debtor and for Wachovia, Bank of America and Morgan Stanley that Robinson was representing himself and "the entire class of Common Stockholders of Sunbeam Corporation, to

represent all as their interests may appear." (App. H, pp. 40a-, 43a). The Bankruptcy Court and the U.S. Trustee in Bankruptcy had previously denied requests to appoint a shareholders' committee, ruling long prior to the Confirmation Hearing and without any evidence whatever of the required liquidation value of Sunbeam assets, that there would be nothing left for stockholders after payment of the banks' and Morgan Stanley debt. Debtor's and the banks' and Morgan Stanley counsel had objected to such appointment on the stated ground that it would be a dissipation of the corporation's funds since there was going to be nothing left for stockholders in any event. (App. P, p. 88a).

During the Confirmation Hearing of November 20, 2002, Harvey Miller, trial counsel for Sunbeam, admitted that Robinson disputed the following:

1. That the liquidation value of Sunbeam was wholly inadequate to provide value to any equity interest holders (Tr. pp. 30-31).

2. Sunbeam had met its burden of proof as to value, best interest, or that "The plan has been proposed in good faith and not by any means forbidden by law." (Tr. pp. 28-31).

He did, however, admit that "The issue today is whether the plan of reorganization complies with the provisions of Section 1129." (Tr. p. 44).

The only witnesses presented to carry the burden of proof on Section 1129(a) were Mr. Greene with regard to his Valuation Analysis and Mr. Frederick, Senior V.P. of Finance of Sunbeam, as to his so-called liquidation analysis. This was admitted on the record by Judge Gonzalez (Tr. p. 289) and so stated in his Confirmation Order (App. I, p. 63a, Tr. p. 284).

Upon cross examination of Mr. Greene by Robinson, who had subpoened Greene and Jerry Levin, CEO of Sunbeam, (Tr. pp. 129-131), Greene admitted that he had made no independent valuation nor had anyone else do so for the assets of Sunbeam and its subsidiaries. (Tr. pp. 87-88). His Valuation Analysis had nothing to do with the value of Sunbeam and its subsidiaries' assets. Whereupon, Mr. Miller interrupted the cross examination and stated, "We will stipulate that Mr. Greene and his organization, Miller, Buckfire, did not do a physical appraisal of physical assets." (Tr. p. 88).

The following exchange then took place between Robinson and Greene (Tr. p. 88):

> Q. Okay. Now if Mr. Frederick's liquidation analysis is based on your financial analysis, then that is not based on any valuation of assets, is it?
>
> Interjection by Mr. Miller: "We just stipulated to that."

Then, at pages 89-90 of the transcript, Greene admitted that he had "no knowledge of the value of the foreign subsidiaries, local subsidiares, the buildings, or anything like that." At this point, Judge Gonzalez interrupted, stating, "They have already stipulated that he doesn't." When Frederick testified under cross examination by Robinson, he admitted that he had no basis whatever for his "liquidation analysis", except for his opinion and what was contained in Greene's Valuation Analysis and testimony (Tr. pp. 100-108).

Consequently, there was not a scintilla of evidence of the requirements of Section 1129(a), Debtor had introduced no evidence whatever to carry its burden of proof under 1129(a), and Judge Gonzalez had no authority to confirm the Plan of Reorganization.

Both the District Court and the second panel of the Court of Appeals in this case have ignored the repeated, established facts in this case showing beyond any dispute that the Confirmation Order involved here is statutorily invalid on its face, and despite the ruling of the first panel that Debtor was to brief and respond to Robinson's brief and appendix so that there could be a decision on the merits in this case (App. B, pp. 6a, 7a; App. C, pp. 8a, 9a).

The Second Circuit panel issuing the Summary Order in this case has simply rubber-stamped the patently erroneous and factually unsupportable findings of the District Court that Robinson should have moved for a stay to halt the illegal proceedings under the invalid order, instead of looking at the fact that the entire Order was invalid to begin with and that Robinson had raised that issue repeatedly at every stage of the proceedings in this case.

It made no sense to proceed for a stay when the claim and evidence showed the invalidity of the Confirmation Order and a request for stay would have been both inconsistent and futile in any event since previous requests for such a stay had been summarily denied by the same District Court below. As a matter of fact, that was the reason that the Debtor used to obtain a transfer to Judge Chin and to delay the case and allow even more time to complete more illegal acts under that Order.

REASONS FOR GRANTING THE WRIT

There is confusion now existing in the Circuits and other courts below as to exactly what affect the *Chateaugay* case has in a case where mootness is claimed in a bankruptcy case. In any event, this Sunbeam case is the

first case where the Circuit Court that decided that case has ruled that it will apply to a situation where the underlying Confirmation Order of the Bankruptcy Court, even though invalid on its face, and created by a conspiracy to defraud stockholders, simply because "substantially all" the illegal acts set out in that illegal Order have been accomplished in a frantic 12 day period after its issue and while an appeal is then pending before the same Circuit Court that had issued that *Chateaugay* decision to begin with.

As Robinson pointed out to the panel hearing the oral argument in this case on April 24, 2006, such an interpretation of *Chateaugay* is ridiculous. It is exactly just as ridiculous as holding that an embezzler cannot be indicted or prosecuted because the embezzler has quickly gone out and spent the money before being caught.

Both the Federal District Court and the Second Circuit Court of Appeals have held that the *Chateaugay* case can be used to cover up both civil and criminal acts performed in carrying out the provisions of a Confirmation Order invalid on its face, simply by those courts ignoring the fact that in the *Chateaugay* case there was never any question of the validity of the Confirmation Order. Consideration of this issue is of extreme importance in protecting the integrity of this country's securities markets and maintaining the confidence of current and future investors that their investments will be protected by enforcement of the laws and regulations by the appropriate courts and agencies of this country.

The actions of the Bankruptcy Court, the Federal District Court, of certain personnel in the Clerk's Office and the second panel of the Second Circuit Court of Appeals in this case have "so far departed from the

accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." (Supreme Court Rule 10a).

Before this Summary Order decision by the same Circuit Court that decided *In Re Chateaugay Corp.*, 10 F.3d 944 (2d Cir. 1993), there was some confusion among the Circuit Courts as to the scope of its application. That same Court has now, by affirming the decision of the District Court below in summary fashion, without there ever having been a decision on the merits, expanded the scope of its application to cover even a case where the Confirmation Order was invalid in its inception and all the illegal acts done pursuant to that order will stand.

The Second Circuit Court panel in this case cited the Third Circuit case of *In Re Continental Airlines,* 91 F.3d 553 (3d Cir. 1996), as suggesting abuse of discretion review of the district court's balancing of equitable and prudential factors and "Robinson's lack of diligence" in not seeking a stay. In the *Continental Airlines* case, Judge Alito wrote a dissenting opinion, joined in by five of the other *en banc* panel members. In that dissent, Judge Alito stated (pp. 572-573):

> "C. One final aspect of the majority opinion warrants a response, and that is the majority's discussion of the Trustees' failure to seek or obtain a stay. I have two comments regarding this discussion.
>
> First, while it might be desirable to have a rule that flatly requires a stay whenever a party takes an appeal that might upset a plan of reorganization, neither the Bankruptcy Code nor the Bankruptcy Rules contain any such sweeping provision;

our court had not adopted any such rule at the time of the Trustees' appeal[7] (and, indeed, still has not done so); and it would consequently be unfair to apply such a rule to the Trustees retroactivly.

Second, in the absence of such a blanket rule, we should focus on whether the purposes that would be served by a stay require that the Trustees be thrown out of court at the threshold. The purpose of a stay in this context is to prevent transactions that might otherwise occur in reliance on the plan of reorganization and that would be difficult or painful to undo if the appeal were to succeed. Accordingly, the Trustees' failure to obtain a stay in this case might limit the relief that would be available to them if they succeeded on the merits of their appeal, but it cannot justify the refusal at the outset even to consider their arguments.

In sum, I believe that the Trustees' claim should be entertained on the merits. The mere act of entertaining that claim would not imperil Continental's reorganization or impair any legitimate reliance interests. If the Trustees' claim were considered and they won on the merits, any threat to the reorganization or to legitimate reliance interests could be taken into account in framing the Trustees' relief. What the district court and the majority have done – throwing the Trustees out of court before the merits of their claim are even heard – is unjustified and unjust.

For these reasons, I respectfully dissent. I would reverse the order of the district court and remand for a decision on the merits."

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[7] In *In re Joshua Slocum, Ltd.* 922 F.3d 1081, 1085 (3rd Cir. 1990) (footnote omitted), we noted that "only

[footnote continued]

> two provisions of the Bankruptcy Code, 11 U.S.C. §§363(m) and 364(e), specifically require that a party seek a stay pending appeal,' and we "decline[d] to interpret the mootness principles in such a way that would, in effect, create a third situation where parties are required to seek a stay."

In the case of *In Re Zenith Electronics Corp.*, 329 F.3d 338 (3rd Cir. 2003), Judge Becker wrote the opinion and reversed the district court's dismissal of an appeal for mootness and stated, "We have determined that an appeal is constitutionally moot 'only if events have taken place that make it impossible for the court to grant any effective relief whatever.' ", citing *Church of Scientology of Cal. v. United States*, 506 U.S. 912, 113 S.Ct. 447, 121 L.Ed. 313 (1992). Judge Becker had joined Judge Alito's dissent in the earlier *Continental* case cited above.

Here, it definitely is not impossible for the Court to grant effective relief. In fact, it is exactly the opposite. The facts establishing the Conspiracy to Defraud the Sunbeam legitimate stockholders have never been rebutted or questioned by counsel for Debtor or the banks throughout at least three full briefings, the Confirmation Hearing, motions, seeking of judge changes and all other activities connected with the appeals. Unlike the *Enron* case, this case does not have to go through a tortuous trial relying to a large extent on circumstantial evidence. This is a case where the shareholders' losses can be recovered for them, and the corporation can be restored to a strong financial condition for their benefit, with all the benefits of having had a class action already litigated for the stockholders without an army of lawyers walking away with the major part of the recovery. (See App. K, Attachment, Proposed Remedies and Damages; App. L, pp. 75a-78a).

In any event, without even discussing the scope or application of the mootness doctrine, this case can be decided on the unquestioned evidence of record, including the admissions of Debtor's and the banks' counsel and witnesses, as a simple case of conspiracy to defraud, with further hearing or procedure to establish damages, sanctions or other possible protections or benefits for the stockholders owning at that time. (App. H., pp. 40a-41a).

Even if the mootness doctrine set out in *Chateaugay* were to apply, all those points set out therein for non-application are met under the facts in this case. The Court "can still order some effective relief" and the corporation will then emerge in an even much stronger condition that it was in than when taken over by Coleman and Jerry Levin. Also, any requirement for a stay order in this case would enforce such a sweeping rule as to be inequitable and unconscionable (See *Continental Airlines, supra,* Alito dissent, p. 567).

CONCLUSION

The Bankruptcy Court had no legal authority to confirm the Plan of Reorganization under the facts in this case. The District Court and the Second Circuit Court of Appeals erred in refusing to decide that issue on the merits, assuming legality of the Confirmation and dismissing the appeal for mootness based on "substantial completion" of the illegal acts set out in the Plan of Reorganization. The facts supporting the charge set out in all phases of this case of Conspiracy to Defraud have been proven and there is no question of dispute of any of the material facts. Petitioner requests Summary Judgment on that issue and return to the lower court for

a hearing or procedure to establish damages, sanctions, or other possible protections or benefits for the stockholders whose equity interests were misappropriated.

Respectfully submitted,

FRANCIS J. ROBINSON
832 Milmar Road
Newtown Square,
Pennsylvania 19073
(610) 356-3382
Petitioner Pro Se.

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FRANCIS J. ROBINSON
832 Milmar Road
Newtown Square,
Pennsylvania 19073
(610) 356-3382
Petitioner Pro Se.

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APPENDIX A

[Filed Apr. 26, 2006]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 26th day of April, two thousand and six.

PRESENT:

Hon. John M. W[illegible]er, Jr.,
Chief Judge,
Hon. Amalya L. Kearse,
Hon. Ralph K. Winter,
Circuit Judges.

In re: SUNBEAM CORPORATION,

Debtor.

No. 04-1381-bk

FRANCIS J. ROBINSON,

Appellant,

- v. -

SUNBEAM CORPORATION,

Appellee.

APPEARING FOR APPELLANT:
FRANCIS J. ROBINSON,
Newtown Square, Pennsylvania.

APPEARING FOR APPELLEE:
STEPHAN A. RADIN (Diane Harvey and Kathleen E. Murphy, *on the brief,* Weil, Gotshal & Manges LLP, New York, New York.

Appeal from a judgment of the United States District Court for the Southern District of New York.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED that the district court's judgment is **AFFIRMED.**

Appellant Francis J. Robinson appeals from the January 30, 2004 judgment of the United States District Court for the Southern District of New York (Denny Chin, *Judge*) dismissing as "equitably moot" his appeal

from the November 27, 2002 order of the United States Bankruptcy Court for the Southern District of New York confirming appellee Sunbeam Corporation's plan of reorganization confirming appellee Sunbeam Corporation's plan of reorganization (the "plan" or "POR"). Robinson asked the district court, as he asks this court, to vacate the bankruptcy court's order confirming the plan and to restore Sunbeam to its December 18, 2002 pre-reorganization status because Sunbeam did not prove in bankruptcy court that it met the plan-confirmation requirements codified in subsections (a)(3) and (a)(7)-(A)(ii) of 11 U.S.C. §1129. We assume the parties' familiarity with the facts and procedural history.

In *In re Chateaugay Corp.*, 10 F.3d 944 (2d Cir. 1993), this court held that district courts should consider the following five factors in deciding whether an appeal of a bankruptcy transaction is equitably moot, all of which must be present to render the appeal not equitably moot:

(a) the court can still order some effective relief;

(b) such relief will not affect "the re-emergence of the debtor as a revitalized corporate entity";

(c) such relief will not unravel intricate transactions so as to "knock the props out from under the authorization for every transaction that has taken place" and "create an unmanageable, uncontrollable situation for the Bankruptcy Court":

(d) the "parties who would be adversely affected by the modification have notice of the appeal and an opportunity to participate in the proceedings"; and

(e) the appellant "pursued with diligence all available remedies to obtain a stay of execution of the objectionable order . . . if the failure to do so

> creates a situation rendering it inequitable to reverse the orders appealed from."

Id. at 952-53 (citations omitted). The district court specifically ruled that Robinson was, inter alia, unable to satisfy the last of these factors because Robinson did not move in the bankruptcy court, or indeed any court, to stay consummation of the plan of reorganization pending appeal of the approval order. The district court ruled that this failure would make it inequitable to now undo the consummation of the plan.

The district court correctly identified the equitable-mootness doctrine as articulated in *In re Chateaugay*, and the District court's finding that Robinson "did not diligently pursue all available remedies to obtain a stay of execution of the POR" is free of error. Robinson's failure to move in the bankruptcy court for a stay suffices to show a lack of diligence. *See in re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 145 (2d Cir. 2005) (relying on a failure to seek a stay of the confirmation order and a failure to seek expedited review of the order to uphold the district court's finding of equitable mootness). And the district court did not err in determining that Robinson's lack of diligence rendered it inequitable to now undo the plan's consummation. *See id.*; *see also In re Cont'l Airlines*, 91 F.3d 553, 560 (3d Cir. 1996) (suggesting abuse-of-discretion review of the district court's balancing of equitable and prudential factors in applying the equitable-mootness doctrine). Accordingly, the district court did not err in dismissing Robinson's appeal.

For the foregoing reason, the judgment of the district court is **AFFIRMED**. No costs.

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: /s/ Lucille Carr
Lucille Carr, Deputy Clerk

APPENDIX B

[Filed Nov. 23, 2005]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
48 Centre Street, Foley Square
New York NY 10007

Roseann H. MacKehnie
Clerk

Before: Hon. Roger J. Miner,
Hon. Jose A. Cabranes
Hon. Chester J. Straub,
Circuit Judges

IN RE: SUNBEAM CORPORATION

Docket No. 04-1381-bk

ORDER

Appellant, *pro se,* moves for reconsideration of this Court's March 25, 2005, order denying his motion to reinstate this appeal. Because neither the Federal Rules of Appellate Procedure nor the Local Rules provide for motions for reconsideration, this Court construes appellant's motion as a successive motion to reinstate the appeal. Because we find good cause has been shown for appellant's failure to timely file an appellate brief, we recall the mandate and GRANT appellant's motion to reinstate the appeal. *See* Fed. R. App. P. 2. It is so ordered.

Judge Miner dissents for the following reasons: The Brief and Appendix – offered to the Court six weeks after the appeal was dismissed, three-and-one-half months after the filing date that was specified in the Court's scheduling order, and three weeks after the motion to reinstate was filed – were untimely submitted; good cause for filing the Brief and Appendix at this late date has not been demonstrated; and the appeal is meritless in any event.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk

by: /s/ Arthur M. Heller
Arthur M. Heller
Motions Staff Attorney

11/23/05
Date

APPENDIX C

[Filed Dec. 1 2005]

UNITED STATES COURT OF APPEALS
for the SECOND CIRCUIT

04-1381-bk

Civil Appeal Schedule Order #1

IN RE: SUNBEAM CORPORATION

Insofar as the Court, by order filed November 23, 2005, has granted appellant's motion to reinstate the appeal, IT IS HEREBY ORDERED that the following scheduling order shall govern the progress of this appeal:

IT IS HEREBY ORDERED that appellee's brief shall be filed on or before **December 29, 2005.**

IT IS FURTHER ORDERED that the ten (10) copies of each brief shall be filed with the Clerk.

IT IS FURTHER ORDERED that the argument of the appeal may be scheduled as early as the week of **February 13, 2006.**

All counsel should immediately advise the Clerk by letter of the dates thereafter that they are unavailable for oral argument. The time and place of oral argument shall be separately noticed by the Clerk to counsel.

IT IS FURTHER ORDERED that in the event of default by the appellant in filing the record on appeal or the appellant's brief and joint appendix, at the times directed, or upon default of the appellant regarding any

other provision of this order, the appeal may be dismissed forthwith without further notice.

IT IS FURTHER ORDERED that if the appellee fails to file a brief within the time directed by this order, such appellee shall be subject to such sanctions as the court may deem appropriate.

Roseann B. MacKechnie,
Clerk

by /s/ Lisa J. Greenberg
Staff Counsel

Date. 12/1/05

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square
40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

[Filed OCT 26 2004]

Docket Number(s): 04-1381-bk

Robinson v. Sunbeam Corporation

Motion for: Extension of time pursuant to Rule 26(b), Fed. Rules App. Proc.

Set forth below precise, complete state of relief sought:

Appellant filed good faith Motion to Remand, in interest of Judicial and fiscal economy. On Oct. 6, 2004, Court ruled motion filed under wrong rule and denied it. Court granted without prejudice Motion to Dismiss for failure to file joint appendix and brief. Appellant requests amended scheduling Order be issued.

MOVING PARTY: Francis J. Robinson
Appellant/Petitioner

OPPOSING PARTY: Sunbeam Corporation

MOVING ATTORNEY: Francis J. Robinson
832 Milmar Rd.
Newtown Square, PA 19073

OPPOSING ATTORNEY: Stephan Radin, Esq.
Diane Harvey, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Ave.
New York, NY 10153

Court-Judge/Agency appealed from: U.S. District Court, South. Dist. NY, Judge Denny Chin

Please check appropriate boxes:

Has consent of opposing counsel:

A. been sought?	☐ Yes	☒ No
B. been obtained?	☐ Yes	☒ No

Is oral argument requested? ☒ Yes ☐ No
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☒ No
If yes, enter date _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No.

Requested return date and explanation of emergency:

_____

Signature of Moving Attorney:
/s/ F. J. Robinson

Date: Oct. 12, 2004

Has service been effected?
[Attach proof of service]

ORDER

[Filed MAR 25 2005]

Before: Hon. Roger J. Miner, Hon. Jose A. Cabranes, Hon. Chester J. Straub, *Circuit Judges*

IT IS HEREBY ORDERED that the motion to reinstate appeal is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk

by /s/ Arthur Heller
Arthur M. Heller
Motions Staff Attorney

Date

APPENDIX E

[Filed Oct 6 2004]

03-cv-536
Chin, J.

MANDATE

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 6th day of October two thousand and four,

Present:

Hon. Roger J. Miner,
Hon. Jose A. Cabranes,
Hon. Chester J. Straub,
Circuit Judges.

In re SUNBEAM CORPORATION,

Debtor-Appellee,

v.

FRANCIS J. ROBINSON,

Plaintiff-Appellant.

04-1381-bk

Appellant, *pro se*, moves for "Procedural Relief Pursuant to Local Rule 27(f)," and appellee moves to dismiss the appeal for failure to comply with this Court's scheduling order. Upon due consideration, it is ORDERED that the Rule 27(f) motion is DENIED, because the relief sought, a remand to the district court, requires a substantive determination of the merits of this appeal, and is therefore not the proper subject of a motion brought pursuant to thie Rule. *See* Second Circuit Local Rule 27(f). The motion to dismiss the appeal is GRANTED without prejudice, because appellant failed to file a brief according to the terms of the June 30, 2004 scheduling order. *See* Fed. R. App. P. 3(a)(2).

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: /s/ Lucille Carr

ISSUED AS MANDATE: 4/15/05

APPENDIX F

[Filed Jan 23 2004]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Chapter 11 Case No.
01-40291 (AJG)

In re SUNBEAM CORPORATION,

Debtor,

---

03 Civ. 536 (DC)

FRANCIS J. ROBINSON,

Appellant,

- against -

SUNBEAM CORPORATION,

Appellee.

---

03 Civ. 924 (DC)

DANIEL RAY ERICKSON,

Appellant,

- against -

SUNBEAM CORPORATION,

Appellee.

MEMORANDUM DECISION

APPEARANCES: (See last page)

CHIN, D.J.

In this bankruptcy case, appellee Sunbeam Corporation ("Sunbeam")[1] moves to dismiss as moot the pro se appeals of shareholders Francis J. Robinson and Daniel Ray Erickson. Robinson, an attorney, and Erickson appeal an order of the United States Bankruptcy Court for the Southern District of New York (Gonzalez, J.) entered on November 27, 2002, confirming Sunbeam's Third Amended Plan of Reorganization (the "POR") under Chapter 11 of the Bankruptcy Code. The POR has been substantially consummated and appellants cannot overcome the presumption that substantial confirmation renders their appeals moot. Accordingly, Sunbeam's motion to dismiss the appeals is granted.

STATEMENT OF THE CASE

I. Facts

On November 27, 2002, the bankruptcy court confirmed the POR. During a morning telephone conference on December 10, 2002, the bankruptcy court denied motions to stay consummation of the POR pending appeal by Erickson, Robinson, and a third party, Oaktree Capital Management LLC ("Oaktree"). (Apr. 11, 2003 Radio Aff. Ex. 4). The bankruptcy court, however, stayed consummation of the POR until 5:00 p.m. "to enable any of the three applicants to seek relief in the District Court." (*Id.*).

---

[1] On December 6, 2002, Sunbeam changed its name to American Household, Inc.

At approximately 4:30 p.m. on December 10, 2002, in a telephonic hearing before this Court, Oaktree moved for a stay pending appeal. The motion was denied. *Oaktree Cap. Mgmt., LLC v. Sunbeam Corp. (In re Sunbeam Corp.)*, Misc. No. M-47 (S.D.N.Y. Dec. 10, 2002). Robinson participated in the telephonic hearing, but he did not explicitly join in the motion to stay the consummation of the POR not did he make a separate motion to stay. (*See* Feb. 10, 2003 Robinson Letter to Court (Apr. 11, 2003 Radin Aff. Ex. 6)).

Erickson waited until after the bankruptcy court's deadline for seeking a stay had passed before mailing his motion to stay confirmation to the Clerk's Office. (Apr. 11, 2003 Radin Aff. Ex. 5). Erickson's motion was docketed on January 31, 2003.

Following the bankruptcy court's ruling and this Court's denial of a stay, Sunbeam proceeded to consummate the POR. On December 17, 2002, Sunbeam filed a new certificate of incorporation and on December 18, 2002 it adopted new bylaws. (Isko Aff. ¶ 6). On December 18, 2002, Sunbeam completed the transactions necessary to close on a $380 million working capital facility, the proceeds of which were used to repay amounts owed by Sunbeam, to provide cash collateral for outstanding letters of credit, and to fund the working capital needs of Sunbeam and its subsidiaries. (*Id.* ¶ ¶ 6-7). The same day, more than $1.6 billion of liens securing Sunbeam's debtor-in-possession credit facility and its prepetition credit facility were released. (*Id.* ¶ 8). Also on December 18, 2002, Sunbeam released stock certificates evidencing 31,529,567 shares of common stock in an entity called "Reorganized Sunbeam" to Sunbeam's pre-bankruptcy lenders, the trustee on behalf of Sunbeam's subordinated noteholders, and Jerry W. Levin, the

chief executive officer of Reorganized Sunbeam. (*Id.* ¶9). A registration rights agreement and a security-holders agreement governing the Reorganized Sunbeam common stock was executed the same day. (*Id.* ¶10). Additionally, several financial entities received $100 million face value pay-in-kind secured debt of Reorganized Sunbeam. To secure the debt, second priority lines were granted on the same assets securing the $380 million working capital facility. (Isko Aff. ¶11). As of December 18, 2002, any executory contract or unexpired lease not previously rejected was deemed assumed by Reorganized Sunbeam (*Id.* ¶12). Also on December 18, 2002, a new board of directors of American Household was elected. (*Id.* ¶13.). On December 19, 2002, Reorganized Sunbeam issued employee stock options effective December 18, 2002. (*Id.* ¶14).

II. Procedural History

On March 6, 2003, Erickson filed a motion seeking an order preventing Bank of America, Wachovia Bank, and Morgan Stanley from transferring or selling stock of American Household, Inc.[2] On March 24, 2003, Erickson served a motion seeking "To Set Aside Confirmation Hearing On Grounds of Fraud, Invoke The Discovery Process And Request For Jury Trial." This motion has not been docketed.

On January 24, 2003, Robinson filed a notice of appeal from the bankruptcy court's confirmation of the POR.

---

[2] On January 31, 2003, Erickson filed a notice of motion for a stay of the POR pending appeal of the confirmation order. By order dated September 5, 2003 (Chin, J.), this motion was denied as moot.

Before the Court is Sunbeam's April 11, 2003 motion to dismiss the appeals of Erickson and Robinson as moot.

On May 2, 2003, Robinson filed a motion to vacate the bankruptcy court's confirmation of the POR.

DISCUSSION

I. Applicable Law

"[I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party, the appeal must be dismissed." *Church of Scientology of Cal. v. U.S.*, 506 U.S. 9, 12,(1992) (quoting *Mills V. Green*, 159 U.S. 651, 653 (1895)). In the bankruptcy context a case is moot even when "effective relief could conceivably be fashioned, [but] implementation of that relief would be inequitable." *In re Best Prods. Co., Inc.*, 68 F.3d 26, 30 (2d Cir. 1995) (quoting *In re Chateaugay Corp.*, 988 F.2d 322, 325 (2d Cir. 1993)).

"Substantial consummation" of a plan of organization "raises a strong presumption in favor of dismissing an appeal as moot." *In re Home Holdings, Inc.*, 2001 WL 262750, at *5 (S.D.N.Y. Mar. 16, 2001). "It is inherently improbable, once there has been 'substantial consummation,' that an appellate court will be able to fashion effective relief." *In re Texaco, Inc.* 92 B.R. 38, 46 (S.D.N.Y. 1988). "Substantial consummation" is defined in the Bankruptcy Code as: "(A) transfer of all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan." 11 U.S.C. §1101(2). To overcome the pre-

sumption in favor of dismissing their appeals, appellants must establish the existence each of the following circumstances:

> (a) the court can still order some effective relief; (b) such relief will not affect "the re-emergence of the debtor as a revitalized corporate entity"; (c) such relief will not unravel intricate transactions so as to "knock the props out from under the authorization for every transaction that has taken place" and "create an unmanageable, uncontrollable situation for the Bankruptcy Court"; (d) the "parties who would be adversely affected by the modification have notice of the appeal and an opportunity to participate in the proceedings"; and (e) the appellant "pursue[d] with diligence all available remedies to obtain a stay of execution of the objectionable order . . . if the failure to do so creates a situation rendering it inequitable to reverse the orders appealed from."

Chateaugay, 10 F.3d at 952-53 (citations omitted).

II. Application

A. Substantial Consummation of the POR

As a preliminary matter, I note that neither Erickson nor Robinson disputes Sunbeam's contention that substantial consummation of the POR "plainly has occurred." (Sunbeam Apr. 11, 2003 Mem. in Support of Mot. to Dismiss at 5-6). Based on the numerous steps taken by Sunbeam following the bankruptcy court's confirmation of the POR, I hold that the POR has been substantially consummated since December 18, 2002.

B. Appellants Cannot Establish All of The Chateaugay Factors

Even assuming this Court could award the relief sought by appellants, restoring Sunbeam to its pre-December 18, 2002 status would have a profoundly disruptive effect on Sunbeam "as a revitalized corporate entity." *Chateaugay*, 10 F.3d at 953 (citation omitted). In testimony that is unchallenged by appellants, Sunbeam's chairman and chief executive officer, Jerry M. Levin, testified that Sunbeam's corporate viability depended on its ability "to emerge from Chapter 11 as quickly as possible." (Apr. 11, 2003 Radin Aff. Ex. 2, at 278).

Undoing the consummation of the POR would entail the reinstatement of previously released liens having a face value in excess of $1.6 billion, eliminate more than 31 million shares of Reorganized Sunbeam common stock, undo executory contracts and unexpired leases previously deemed assumed by Sunbeam, and disband Reorganized Sunbeam's newly elected board of directors. More than a year of business dealings under the auspices of the POR would have to be undone and put on hold pending approval of a new plan of reorganization. The relief sought by appellants would unravel the intricate transactions premised on the POR creating "an unmanageable, uncontrollable situation for the Bankruptcy Court." *Chateaugay*, 10 F.3d at 953.

Additionally, it is clear that appellants did not diligently pursue all available remedies to obtain a stay of execution of the POR. *Id.* Indeed, Erickson mailed a motion to stay confirmation of the POR after the deadline to move for a stay had passed. Robinson has never requested a stay of the confirmation of the POR. Given the lack of action by appellants, equitable considerations require dismissal of the appeals. While Erickson

waited more than seven weeks to file a motion for a stay of the POR, Sunbeam and numerous entities entered into agreements in reliance on Sunbeam's emergence from the uncertainty of Chapter 11 proceedings. It would be inequitable to undo their efforts now.

Because appellants cannot meet all of the *Chateaugay* factors, the appeals challenging the bankruptcy court's confirmation of the POR are moot. Accordingly, appellants' appeals must be dismissed.

CONCLUSION

For the reasons set forth above, Sunbeam's motion to dismiss is granted. The appeals filed by Erickson and Robinson challenging the bankruptcy court's confirmationof the POR are dismissed with prejudice. Their pending motions are denied as moot as well.

SO ORDERED.

Dated: New York, New York
January 23, 2004

/s/ Denny Chin
DENNY CHIN
United States District Judge

APPEARANCES

DANIEL RAY ERICKSON
Appellant *Pro Se*
1291 Waterfall Dr.
Spring Hill, FL 24608

FRANCIS J. ROBINSON, Esq.
Appellant *Pro Se*

832 Milmar Road
Newtown Square, PA 19073

WEIL, GOTSHAL & MANGES LLP
Attorneys for Appellee Sunbeam Corp. (now known as American Household, Inc.)
By: Stephen A. Radin, Esq.
George A. Davis, Esq.
Diane Harvey, Esq.
767 Fifth Avenue
New York NY 10153

APPENDIX G

FRANCIS J. ROBINSON
Attorney At Law
832 Milmar Road
Newtown Square, Penna. 19073
(610) 356-3382

May 5, 2005

To: Hon. Roger J. Miner
Hon. Jose A. Cabranes
Hon. Chester J. Straub
Circuit Judges

May it please the Court:

I am enclosing for your convenience copies of the brief, Appendix, and the Reply to Motion to Dismiss and Response to Motion to Remand in the Sunbeam bankruptcy case. Also enclosed is a copy of my Motion to Reconsider.

It does not appear that the filed copies of the brief and appendix have been distributed from the Clerk's office. Mr. Heller, Motions Staff Attorney who signed the Order at the bottom of a Motion for Extension of Time that was in fact refused for filing before the Motion to Reinstate was filed, did not know that the brief and appendix had been filed over 5 months before when I spoke with him on Monday of last week when I received that Order in Florida.

It appears to me that the Clerk's office took the position that the Court's Order of October 6, 2004 was final and did not understand that it was "without prejudice"

to proceed on the substantive and legal aspects of the case, which have not been considered up to this point in time.

Respectfully submitted,

Francis J. Robinson

Copies: Stephan Radin, Esq.
Diane Harvey, Esq.
Peter Pantaleo, Esq.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square
40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 04-1381-bk

Robinson v. Sunbeam Corporation

Motion for: Reconsideration of Denial of Motion to Re-instate Appeal.

Set forth below precise, complete statement of relief sought: On Oct. 6, 2004, Court denied Motion to Remand and granted without prejudice Motion to Dismiss for failure to file brief and appendix timely, Appellant promptly filed brief and appendix on Nov. 17, 2004. On March 25, 2005, Motions Counsel signed denial of reinstatement. Appellant believes notice of denial over five months after correction of filing brief and appendix was in error. Sole reason for dismissal was corrected.

MOVING PARTY: Francis J. Robinson
Appellant/Petitioner

OPPOSING PARTY: Sunbeam Corp.

MOVING ATTORNEY: Francis J. Robinson
832 Milmar Rd.
Newtown Square, PA 19073

OPPOSING ATTORNEY: Stephan Radin, Esq.
Diane Harvey, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Ave.
New York, NY 10153

Court-Judge/Agency appealed from: U.S. District Court, South. Dist. NY, Judge Denny Chin

Please check appropriate boxes:

Has consent of opposing counsel:

A. been sought? ☐ Yes ☒ No
B. been obtained? ☐ Yes ☒ No

Is oral argument requested? ☐ Yes ☒ No
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☒ No
If yes, enter date _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No.

Requested return date and explanation of emergency

_____

Signature of Moving Attorney:
/s/ Francis J. Robinson
Date: May 5, 2005

Has Service been effected?
[Attach proof of service]

☒ Yes ☐ No

ORDER

IT IS HEREBY ORDERED THAT the motion is

GRANTED DENIED

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ By: _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 04-1381-bk

FRANCIS J. ROBINSON,

Appellant,

v.

SUNBEAM CORPORATION,

Appellee.

MOTION FOR RECONSIDERATION OF
DENIAL OF MOTION TO REINSTATE APPEAL

May 5, 2005

AFFIDAVIT OF FRANCIS ROBINSON
IN SUPPORT OF
MOTION FOR RECONSIDERATION OF APPEAL

I, Francis J. Robinson, being duly sworn, do hereby depose and say:

On August 9, 2004, Robinson filed a MOTION FOR PROCEDURAL RELIEF PURSUANT TO RULE 27(f). By notice dated August 24, 2004, Robinson was notified that "Your motion for remand has been received and filed. It has been added to the substantive motions calendar for Tuesday, October 5, 2004." Debtor replied,

adding a Motion to Dismiss for failure to file a brief, discussing or addressing none of the substantive or factual issues involved in the case.

Robinson filed a REPLY TO MOTION TO DISMISS AND RESPONSE TO MOTION TO REMAND on August 24, 2004. In checking with the Postal Service concerning delivery confirmation, Robinson was advised that the package was reported by the addressee to be misaddressed in that Zip Code 10017 instead of 10007 was used and that the mailing would be returned to sender. Immediately, on August 28, 2004, Robinson filed another 5 copies with the Clerk's office (See Ex. A).

In a decision dated October 6, 2004, the Court denied Robinson's Motion for Procedural Relief "because the relief sought, a remand to the District Court, requires a substantive determination of the merits of this appeal, and is therefore not the proper subject of a motion brought pursuant to this Rule *** The motion to dismiss the appeal is GRANTED *without prejudice* (emphasis added), because appellant failed to file a brief according to the terms of the June 30, 2004 scheduling order."

On October 14, 2004, Robinson filed a MOTION FOR EXTENSION OF TIME to file the brief and appendix, explaining that "appellant filed good faith Motion to Remand in interest of Judicial Economy." (See letter of July 26, 2004 to Lisa J. Greenberg, Staff Counsel, Exhibit B to Motion for Reinstatement of Appeal filed October 24, 2004). After the Motion for Extension of Time was received by the Clerk's Office, Robinson was advised by a representative of that office that that motion was improper and would not be accepted for filing since the appeal had been dismissed. After some discussion, it was determined that my remedy was to

file a Motion for Reinstatement of Appeal. This was done promptly on October 24, 2004.

Robinson very shortly thereafter filed an AMENDMENT TO MOTION TO REINSTATE APPEAL, eliminating the request for a reasonable extension of time to file his brief and appendix and including an original and nine copies of both the brief and the appendix (Ex. B). All these documents were filed by Federal Express and received and docketed on November 17, 2004. In a letter sent to Robinson's PA address, post-marked April 17, 2005 and forwarded to the proper Florida address and received on April 25, 2005, there was a copy of the Notice of Motion for Extension of Time which had earlier been refused filing by the Clerk's office and supposedly replaced by the Motion for Reinstatement. At the bottom of that copy, there was a statement signed by Arthur Heller, Motions Staff Attorney, that "IT IS HEREBY ORDERED that the motion to reinstate appeal is DENIED." (See Ex. C).

When Robinson contacted Mr. Heller by telephone on the day he received the letter in Florida, Mr. Heller was surprised to hear that the brief and appendix had been filed over five months earlier. While on the phone, he checked the computer and found that to be a fact, which he had not known to be so up to that time.

After talking to Mr. Heller, Robinson attempted to contact Nadege Richards, Case Manager of this appeal. A Mr. Don Bolden answered the phone and said that Ms. Richards was not in that day. When I tried to question Mr. Bolden as to how this dismissal could come about since the brief and appendix had been filed over 5 months ago, he told me there was nothing I could do since this case "was dead", everything had been sent back

to the District Court, and the Court of Appeals would have nothing further to do with it.

The next day, Tuesday, April 26, 2005, I tried again to get Ms. Richards by phone. Again, Mr. Bolden answered the phone. He once again told me that Ms. Richards was not in. When asked when she was expected, he told me that she was on "indefinite leave" and that in any event there was nothing I could do since this case was "closed" in the Circuit Court. When I asked to speak to his supervisor, he hung up on me.

I then called the Clerk's office and was told the Clerk was not in and finally spoke with Michael Adragna. He advised me that he was the Supervisor of Mr. Bolden and Ms. Richards. His suggestion was that I write a letter to the Court and he would personally see that a copy go to the three Judges on the Panel involved. I advised him that I believed it would be more appropriate if I filed a formal motion.

I am attaching as Exhibit D hereto copies of portions of the brief entitled ISSUES PRESENTED FOR REVIEW and STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT. The brief and appendix contain and refer to documents, testimony, and refer to documents, testimony, and legal arguments covering legal and factual support for this Motion, and the CONCLUSION AND RELIEF SOUGHT by Robinson. As was stated in the brief filed November 17, 2004, at page 24:

"This case is one of multiple examples of arrogant and extreme conflicts of interest, wilfull and deliberate misrepresentations to stockholders and regulatory officials, all in carrying out a preconceived Plan to strip legitimate stockholders of their property rights without due process. Such actions and Plan should not be con-

doned by this Court. The facts showing total lack of good faith and definitely "not by any means forbidden by law" have not been contested or contradicted in any way by Debtor. Strictly as a matter of law and on the plain wording of Section 1129(a), there is no factual dispute involved here. This is a classic case for a summary decision on the law as applicable."

Since there appears to be some question as to what distribution has been made of many of the documents involved in this case, or where they may be lodged at this time, I am sending the brief, appendix, REPLY TO MOTION TO DISMISS AND RESPONSE TO MOTION TO REMAND, as well as the cover letter of August 28, 2004, in separate cover to Judges Miner, Cabranes and Straub, with a copy of this motion. The parties and the Clerk's office have previously been provided all documents referenced herein.

Respectfully submitted,

/s/ Francis J. Robinson
Francis J. Robinson
832 Milmar Road
Newtown Square, PA 19073
Phone: (610) 356-3382

3 of May 2005
/s/ Janice B. Blythe
NOTARIAL SEAL
Commonwealth of Pennsylvania
Newtown Twp., Delaware County
My Commission Expires Dec. 6, 2008

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 04-1381-bk

FRANCIS J. ROBINSON,

Appellant,

v.

SUNBEAM CORPORATION,

Appellee.

AMENDMENT TO MOTION TO REINSTATE APPEAL

Francis J. Robinson
832 Milmar Rd.
Newtown Square, PA 19073
(610) 356-3382

AMENDMENT TO MOTION TO REINSTATE APPEAL

In Debtor's response to Robinson's MOTION TO REINSTATE APPEAL, Debtor's counsel alleges that Robinson's purpose is to delay this proceeding. The facts as to who is responsible for delay in this case are well

established in the record and summarized in APPELLANT'S REPLY TO MOTION TO REINSTATE APPEAL. The purpose of this Amendment is to eliminate the request for a "reasonable delay" in filing the Brief on Appeal and Appendix.

Enclosed herewith are the original and 9 copies of the BRIEF FOR THE APPELLANT and APPENDIX TO BRIEF FOR APPELLANT. As set out in the Form C filed previously, Robinson requested oral argument and will be available at any time scheduled by the Court.

Before filing the Motion for Procedural Relief Pursuant to Rule 27(f), there had been discussions and correspondence with Diane Harvey, Esq. of the Weil firm concerning the Joint Appendix. There did not appear at that time that agreement could be reached on what was or was not relevant regarding the single legal issue involved in this appeal.

Prior to printing the enclosed Appendix, the attached letter and the Index to Appendix was forwarded to Ms. Harvey on Novenber 12, 2004, by facsimile. To eliminate any further charges of Robinson attempting to delay this proceeding, the previously prepared brief and the more recently printed Appendix are being filed with this Amendment on the assumption that such preparation and filing would not be inappropriate since the Court's dismissal of the procedural motion and dismissal of the appeal was "without prejudice" to proceeding on the substantive and legal issues in the case.

Respectfully submitted,

/s/ Francis J. Robinson
Francis J. Robinson

832 Milmar Rd.
Newtown Square, PA 19073
(610) 356-3382

November 16, 2004

ISSUES PRESENTED FOR REVIEW

1. If the underlying Plan of Reorganization cannot be confirmed because of Debtor's failure to carry its burden of proof and failure to satisfy the explicit requirements of Section 1129(a) of the Bankruptcy Code, how can performance of the illegal acts in that POR be used by the District Court to declare moot an appeal based on that underlying illegality which is fully supported by the undisputed facts in this case?

2. When the value of the total assets of the alleged bankrupt corporation are shown to be substantially more than declared by the Debtor, and the Debtor has misrepresented the true value of its total assets and deliberately transferred cash and assets of its 39 subsidiaries out of its value with the lower Courts' concurrence, how can it possibly be found that there would be nothing left for the original stockholders if the corporation were to be liquidated?

3. How could the Bankruptcy Court and the District Court below ignore the undisputed facts in the record in 1. and 2. above and decide that the Debtor and the Lenders involved proposed the Plan of Reorganization involved "in good faith and not by any means forbidden by law"?

STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

There was a total absence of satisfaction of proof of the significant elements of the explicit requirements of Section 1129(a) of the Bankruptcy Code in the Bankruptcy Court below. Accordingly, Judge Gonzalez had no statutory authority to confirm the Plan of Reorganization. Robinson's Motion to Vacate the ensuing unlawful Orders of the Bankruptcy Court should have been decided *de novo* by the District Court prior to considering and granting dismissal of Robinson's appeal and granting Debtor's Motion to Dismiss as Moot, based only on "substantial completion" of the illegal acts consummated under the invalid Orders of Confirmation.

The Statement of Facts herein has never been questioned or countered in any respect with regard to their showing affirmative acts of bad faith, false recording of assets as debt on the books of Sunbeam, removing the total assets of 39 subsidiaries of Sunbeam for "bankruptcy" purposes, plus parking over $2.25 billion of Sunbeam cash in those subsidiaries and then having the Bankruptcy Court and District Court permitting those 39 subsidiaries to be removed separately from this case, claiming they were "administered separately" from the parent Sunbeam "bankruptcy" and closed out and eliminated from this appeal and the Confirmation Hearing of November 20, 2002.

The facts of record show beyond any question that the Debtor, the banks, Morgan Stanley and their counsel acted in bad faith and in concert in actions that resulted in repeated acts of conflicts of interest, false reportings to the courts involved and false reports to Sunbeam stockholders and the SEC. Such acts can hardly be

classified as being "in good faith and not by any means forbidden by law", as specifically required to be shown by Section 1129(a).

The question in this case is purely a matter of law at this point. The unrebutted facts show the exact opposite of what the Debtor was required to prove and did not even make any attempt to do so, despite repeated and constant reminders by Robinson that the record did not contain any evidence of the required elements of Section 1129(a). The judgment of the District Court below should be set aside and the invalid and unauthorized Orders of Judge Gonzalez vacated. The Debtor's, banks' and Morgan Stanley counsel are all experienced bankruptcy counsel, were repeatedly told throughout Robinson's activity in the proceedings prior to, during, and after the Confirmatin Hearing of their failure to produce the evidence required by Section 1129(a). They created all the problems that are now claimed to be "an unmanageable, uncontrollable situation." They should all be held legally responsible for what they created, and subject to whatever remedies this Court, or other courts and regulatory bodies may provide.

[Certificate of Service Omitted In Printing]

APPENDIX H

FRANCIS J. ROBINSON
Attorney At Law
832 Milmar Road
Newtown Square, Penna. 19073
(610) 356-3382

November 11, 2005

To: Hon. Roger J. Miner
Hon. Jose A. Cabranes
Hon. Chester J. Straub
Circuit Judges

Re: Robinson v. Sunbeam Corporation
Docket NO. 04-1381-bk

May it please the Court:

In my letter to you of May 5, 2005, I briefly explained what appeared to be to be a rather extraordinary situation in the above case involving the activities, or lack thereof, of personnel in the Clerk's office. The action taken by me in delivering the brief, appendix and other documents directly to your attention was thought to be the only way that the substantive and legal positions in this case would see the light of day and get a fair judicial hearing by this Court.

In that vein, the considering the extremely long delays caused by the actions of Debtor, counsel for Debtor and the banks and Morgan Stanley, the Courts below, and certain personnel in the Clerk's office, I suggest the following:

In my NOTICE OF APPEARANCE, filed September 13, 2002, I also filed OBJECTIONS TO PROPOSED LOOTING OF LEGAL OWNERS' SUNBEAM COMMON STOCK with the Office of Clerk, U.S. Bankruptcy Court in Chapter 11 case No. 01-40291 (AJG). Copies are attached hereto for your convenience. While I had no retainer agreements for other shareholders, I stated in that NOTICE that I was entering my appearance on behalf of my self and "the entire class of Common stockholders of Sunbeam Corporation, to represent all as their interests may appear."

In the NOTICE OF APPEAL from the Bankruptcy Court, as of December 6, 2002 (Appendix 1a, Exhibit D), it was stated:

"Petitioner, Francis J. Robinson, a party in interest and an attorney of record representing himself and other stockholders of Sunbeam Corporation, hereby appeals from the Court's Confirmation of Reorganization Plan in the above-referenced matter."

It was made quite clear to the Courts below and to Counsel for Sunbeam, Sunbeam officials, and Counsel for the banks and Morgan Stanley and their officials, that my claim was, in actual effect, a class action. Any claim that there was no approval of a class action suit must fail. The class had already been defined and created by all of the above as the entire class of Sunbeam Common stockholders as of the date of the Confirmation Order wiping out their equity and property interests, exactly as proposed by them.

Based upon the facts and the entire record, including the sworn testimony of Jerry Levin, John Frederick and Mr. Greene, the Continuing Conspiracy to Defraud charge has in no way whatever been contradicted and should be

upheld by this Court. All that remains on that issue should be a hearing or procedure to establish damages, sanctions, or other possible protections or benefits for the stockholders owning at that time.

If there will be other actions taken by other Federal, State or local agencies, I believe that they need not be covered or considered in the decision in this appeal.

I regret that circumstances have required me to correspond directly with members of the Court. However, I saw no way that Justice would ever be served without my doing so.

Respectfully submitted,

/s/ F.J. Robinson
Francis J. Robinson
3320 Gulf of Mexico Dr., 305C
Longboat Key, FL 34228
Phone: (941) 387-0012

Copies:
Roseanne B. MacKechnie,
Clerk of Court, CA2
Stephan A. Radin, Esq.
Peter Pantaleo, Esq.

FRANCIS J. ROBINSON
Attorney At Law
832 Milmar Road
Newtown Square, Penna. 19073
(610) 356-3382

September 13, 2002

Clerk, U.S. Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 1004

Re: SUNBEAM CORPORATION
Chapter 11 Case No. 01-40291 (AJG)

Dear Sir:

Enclosed for filing please find my NOTICE OF APPEARANCE AND OBJECTIONS TO PROPOSED LOOTING OF LEGAL OWNERS' SUNBEAM COMMON STOCK, in connection with the above-referenced proceeding.

Sincerely,

/s/ F.J. Robinson
Francis J. Robinson, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Chapter 11 Case No.
01-40291 (AJG)

In re SUNBEAM CORPORATION,

Debtor,

NOTICE OF APPEARANCE

Please enter my appearance as Counsel for myself and the entire class of Common Stockholders of Sunbeam Corporation, to represent all as their interests may appear, in the above-captioned matter. Proof of ownership of 50,000 shares of Sunbeam Common stock is attached hereto and is recorded in the stock ownership records of Sunbeam Corporation.

/s/ F.J. Robinson
Francis J. Robinson, Esq.
832 Milmar Road
Newtown Square, PA 19073
Phone: (610) 356-3382
Admitted, NY & PA

Date: September 13, 2002

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Chapter 11 Case No.
01-40291 (AJG)

In re SUNBEAM CORPORATION,

Debtor.

OBJECTIONS TO PROPOSED LOOTING OF LEGAL OWNERS' SUNBEAM COMMON STOCK

Petitioner objects to the new re-organization plan proposed in the Wall Street Journal article of September 9, 2002 (Ex. A), which indicated that the legally true and only owners of the Sunbeam Corporation are to be stripped of their rights by a proposed transfer of their stock, with no showing whatever of any fault on their part, to creditors, lenders and management who will retain stock options. And that Wall Street Journal article is the only notice that this Petitioner, who owns and paid a very substantial amount of money for his 50,000 shares, has received of this proposed taking of his legally bought and paid for stock for the benefit of others without any compensation to petitioner.

It is Petitioner's demand in this proceeding for either a total liquidation of the assets of Sunbeam Corporation or the retention of their stockholders' rights in the future after the corporation has recovered and paid the debts involved in this bankruptcy proceeding. There has been no showing whatever that such liquidation will not bring

enough funds to pay off all debts and still provide return to the 4400 legal owners of the corporation on their very substantial total investment in that stock. That the people requesting this action believe that paying off the debts and then having a viable corporation after that is going to happen is obvious. Why else would the current managers of the corporation want to keep their jobs and make sure that their stock options survive?

Throughout the earlier reorganization plan now in effect, all representations by Bankruptcy Counsel were that the corporation could continue in business and come out of its debt-laden situation. At page 28 of the Debtors Reorganization Plan presented by Counsel in the Disclosure Statement of the Court dated April 26, 2001, Counsel for Sunbeam stated "the Plan will afford the Debtor the opportunity and ability to continue in business as a viable going concern." That being true at that time, and the same management being still in control, then all equity and fairness requires that the existing common stock owners, the only ones entirely blameless and seemingly without any representation in this proceeding, will be the ones to suffer the most, financially and otherwise. All banks and other creditors will come out fully paid, and the banks and existing management will end up owning all the existing shareholders' stock. This is totally unfair, inequitable, and unconscionable. Such a proposed result, on its face, would be an abuse of judicial discretion at the very least.

If there is to be a continuation of the business of Sunbeam, the legal owners of the common stock should not be the only ones left holding an empty bag while others having no ownership interest and having no investment in the corporation stock end up with everything after even complete payment to them of any debts owed to

them. Such a result cannot be permitted or condoned by the Court.

It is not the purpose of the bankruptcy laws to use the equity of the stockholders to pay off the debts of the corporation. The law provides for liquidation of the *assets* of the corporation to pay the debts, with any remainder going to the stockholders. The law does *not* provide for liquidation of the *stockholders.*

This proposal is described by Sunbeam bankruptcy counsel in the Wall Street Journal article, (P. B3, Sept. 9, 2002) as "We're shedding $1.5 billion in bank debt *** it's a tremendous de-levering." What this is really is a tremendous *shearing* of the stockholder sheep, and a tremendous gift to the banks and current management, at the total expense of the stockholders. Where in law or equity is there any support for a result such as this? And who is there involved in this proceeding to look after and protect the stockholders if the Court does not do so?

This proposed abomination should be rejected out of hand. Sunbeam's Chairman and Chief Executive, Jerry W. Levin, in the plan presented by *his* lawyers, would retain his position, perks and equity in the corporation and strip the stockholders clean to accomplish that. If that does not amount to outright theft, it certainly needs some explanation as to what else it could be called.

The proposed amended plan should be rejected and the existing shareholders' interests protected by the Court. The bankruptcy laws were not enacted to provide one class of citizens with the right to violate the legal or property rights of others. They do not supercede or nullify, or make legal any act that would otherwise be illegal under any other law. Creditors' rights granted under the

bankruptcy laws must be applied with full consideration being given to the myriad of laws and regulations of the Securities and Exchange Commission enacted for the purpose of protecting the public stockholders and regulating corporations for that purpose. The rights of the Sunbeam stockholders under those laws and regulations should be enforced, and not ignored in the application of the bankruptcy laws, which were designed for rather limited purposes. The property right of the public and of the Sunbeam stockholders in this case cannot be trampled upon for the limited purpose of protecting the financial interests of certain creditors and Sunbeam officials and managers. That type of ruling in this case would surely create chaos in this country's securities markets.

Respectfully submitted,

/s/ F.J. Robinson
Francis J. Robinson, Esq.

[Exhibit A, *Wall Street Journal* Article of 9/9/02, Omitted In Printing]

[Certificate Of Service Omitted In Printing]

APPENDIX I

FRANCIS J. ROBINSON
Attorney At Law
832 Milmar Road
Newtown Square, Penna. 19073
(610) 356-3382

June 3, 2004

David Paris, Esq.
Supervisor, Staff Counsel
United States Court of Appeals
For the Second Circuit
United States Court House
40 Foley Square
New York, NY 10017

Re: Robinson v. Sunbeam Corporation
Docket No. 04-1381-bk

Dear Mr. Paris:

For your convenience, and in accordance with our telephone conversation of today, enclosed please find a copy of my letter of April 28, 2004. That is the letter suggesting that a Pre-Argument Conference could be helpful in expeditious disposition of the above case. The Summary of Position is also included, and is based in its entirety on the undisputed facts in th Confirmation Hearing and the District Court Proceedings below.

If you have any questions, please do not hesitate to call me.

Sincerely,

/s/ F.J. Robinson
Francis J. Robinson, Esq.

By facsimile
06/03/04
023

FRANCIS J. ROBINSON
Attorney At Law
832 Milmar Road
Newtown Square, Penna. 19073
(610) 356-3382

April 28, 2004

Office of the Clerk of Court
United States Court of Appeals
For the Second Circuit
United States Court House
40 Foley Square
New York, NY 10017

Re: Robinson v. Sunbeam Corporation
Docket No. 04-1381-bk

Dear Staff:

In accordance with the spirit of Part C, Civil Appeals Management Plan, paragraph 5, Appellant believes a Pre-Argument Conference in this case may be helpful in expeditious disposition of the case. To that end, I am enclosing two copies of a Summary of Position which may be helpful in that regard.

Copies of this letter and Summer have been served this day, also by Express Mail, on Stephan Radin, Esq., counsel for Debtor, and Peter Pantaleo, Esq., counsel for the Lenders, at their respective firms.

Respectfully submitted,

/s/ F.J. Robinson
Francis J. Robinson, Esq.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 04-1381-bk

FRANCIS J. ROBINSON,

Appellant,

v.

SUNBEAM CORPORATION,

Appellee.

SUMMARY OF POSITION

The Sunbeam bankruptcy is the most deliberate, programmed, and arrogant bankruptcy of a major corporation in modern history. In most recent cases, the bankruptcy is caused by management overstating profits to drive the stock up in price. In Sunbeam, it is management and lenders involved, with the apparent concurrence of the U.S. Trustee in Bankruptcy and the Bankruptcy Court, with the objective to ultimately drive the price down, declare the original stock worthless, then issue new stock to replace the declared worthless stock. In the Sunbeam case, this newly issued stock was distributed as follows:

(a) Approximately 96% was issued to the Bank of America, Wachovia, and Morgan Stanley, trading the

stockholders' stock for the $1.6 billion owed by Sunbeam to those banks.

(b) Approximately 3.2% of the newly issued stock sold to Jerry Levin for $3 million of his personal funds.

(c) After the Confirmation Hearing of November 20, 2002, the lenders and Jerry Levin agreed to give 1.5% of their share of the new stock to the bondholders and the Creditors' Committee in alleged settlement of some dispute between the bondholders and Sunbeam and the banks. Other shares were promised Jerry Levin and the "new" corporation management in future stock options.

In response to a question in his deposition on November 13, 2002, at page 45, Jerry Levin answered:

"My base salary and my bonus incentive will be approximately, if not exactly the same that was provided for in my contract originally negotiated with the Sunbeam board and then renegotiated when we filed for Chapter 11. When we filed for Chapter 11 as a condition of going forward, the banks reduced my severance benefits, which I agreed to. They have now made a condition of going forward that I maintain those reduced severance benefits. That instead of getting my retention bonus in cash, I take it in stock and that I invest $3 million of my own money unfinanced by them or the company to go forward."

He also testified there that the banks reacted "poorly" when told by him that one of the "few dozen" inquiries from equity capital firms that had inquired about buying Sunbeam had made an offer to buy, conditioned on "due diligence" and no assumption of debt. When asked how the banks and their representatives reacted to this information, he replied, "They were offended that I had taken this action. Asked that I cease and desist from pur-

suing it (the offer). And asked for the time to get back to us." Mr. Levin never made any further effort to market Sunbeam and never made any attempt whatever to market Coleman (Tr. P.292). Mr. Levin, who was subpoened by Appellant but whose questioning was limited by Judge Gonzalez, agreed that the banks came back with a plan whereby they would convert their $1.6 billion debt into equity of the company. They wanted the new stock issued and the existing stock voided, and Jerry Levin agreed since he wanted the same thing (Tr. pp. 289-90).

Throughout the examination of Mr. Levin by Appellant, the Court refused to allow inquiry into the question of conflict by Mr. Levin due to his connection and dealings with M&F, the price paid for Coleman, and practically any subject other than the valuation of Sunbeam as limited by the affidavits of Mr. Greene and Mr. Frederick (See examination of Jerry Levin, Tr. pp. 278-292).

Jerry Levin's quote, and what follows above, is a direct copy from Appellant's MOTION TO VACATE CONFIRMATION ORDERS, pages 4 and 5. This and all other pleadings related thereto were before Judge Chin. He held it over nine months and then issued his totally unfounded in fact or law Memorandum Decision dismissing the appeal as moot, without any reference whatever to Appellant's statement of facts, reference to law, or legal arguments related thereto.

The net result of all this was that Jerry Levin, the banks and the "old" Sunbeam corporate management would go merrily on in the "new"corporation, debt free, totally at the expense of the original, legitimate stockholders. That all this was a planned and deliberate and still ongoing conspiracy to defraud the legitimate, original stockholders is fully recorded and supported by the

pleadings, briefs, testimony, documents and other evidence in the record before the Bankruptcy Court and the District Court below.

In a brazen admission in his deposition, and again in his testimony in the Confirmation Hearing, Jerry Levin stated that he knew at the very moment that he and MacAndrews & Forbes (M&F) agreed to sell Coleman to Sunbeam, the price paid by Sunbeam was going to render Sunbeam insolvent (Tr. p. 278). As Chairman and CEO of Coleman and Executive V.P. of M&F, he knew that this bankruptcy and the elimination of Sunbeam stockholders was The Plan.

The Agreement of Sale of Coleman was signed February 27, 1998. On April 6, 1998, M&F sold to Sunbeam First Alert and Signature Brands, and in March, sold Eastpack to Sunbeam. Also, on April 6, 1998, Jerry Levin, then in full control of Sunbeam, caused an entire series of notes to be executed by him and other officers of Coleman, First Alert, Sunbeam and M&F subsidiaries, in blank. This series of notes was designed to, and did, draw off cash from Sunbeam and park it in Coleman and the others. This led to the transfer of $2.25 billion in cash from Sunbeam, which was then, and still is falsely carried on the books of Sunbeam as debt for purposes of the planned bankruptcy proceedings (See Exs. 5 and 6; see also Motion to Vacate, Statement of Facts).

Almost immediately after taking over control of Sunbeam, Jerry Levin wrote down the value of Coleman by $1.1 billion, reduced the value of Eastpack by $52 million, First Alert by $62.5 million, and sold Signature Brands at a loss. He also exercised other devices to reduce the value of Sunbeam, for his bankruptcy purposes, down to the ridiculous figure for Stockholder Equity of $819,571,000 (See Monthly Operating State-

ment for Period September 1, 2001 to Sept. 31, 2001 (Ex. 5). Mr. Levin had testified in his deposition of Nov. 13, 2002 that he was not aware of any evidence of these cash transfers being treated as debt and of "putting equity capital in the wrong account" (Depo., pp. 59-60). When confronted with the promissory note from Coleman to Sunbeam, signed by him on April 6, 1998 as the then Chairman and CEO of Coleman and Executive V.P. of M&F, he admitted that he had in fact signed the note and that other officers and affiliates of Coleman Worldwide and other M&F subsidiaries and holdings had done likewise. (Exs. 5 and 6, Tr. pp. 269-273).

On August 12, 1998, as Chairman and CEO of Sunbeam and also Executive V.P. of M&F, Jerry Levin entered into an agreement with M&F "pursuant to which the Company was released from certain threatened claims of M&F and its affiliates arising from the acquisition of Coleman, and M&F agreed to provide "certain management personnel and assistance" to the Company in exchange for "certain warrants to purchase Sunbeam stock expiring in August, 2003" (See Sunbeam Annual Report for 1999, pp. 21-23, 26).

In January 2000, with full knowledge that he and the banks were preparing for the Chapter 11 filings of Sunbeam, Jerry Levin purchased the remaining 19½% of Coleman from M&F, in another brazen act of conflict of interest, since he was still Executive V.P. of M&F at the time he did so.

In the beginning of all this, shortly after Jerry Levin took control of Sunbeam, in his cover letter to stockholders and the SEC in his 1998 and 1999 Annual Reports of Sunbeam, he painted a very rosey picture of the state of the business and anticipated and predicted

great prospects for the future of the business. This was designed for the specific purpose of keeping the price of the stock up, or even increasing it, for the total benefit of Jerry Levin, M&F, and the other officers of Sunbeam, Coleman and subsidiaries and affiliates who had valuable and profitable stock options. It was important also that he keep the price up since most of the price paid for the purchase of Coleman was in Sunbeam stock, which did rise to $44 per share.

During the Confirmation Hearing, none of the above matters were allowed to be gone into, despite repeated protests by Appellant that they were all relevant concerning the burden of proof required of the Debtor by the specific and explicitly clear provisions of Section 1129. Judge Gonzalez repeatedly refused to allow any questions other than what he stated was covered by the issue of value of Sunbeam as set out in the affidavits of Alexander Greene and John Frederick. During examination of Jerry Levin, who had been subpoened by Appellant, and who had to overcome the denial by Harvey Miller of any knowledge that Appellant had done so (See Tr. pp. 129-131), Judge Gonzalez stated when the question of value of Sunbeam and the potential sale price of assets was being inquired into (Tr. pp.289-292):

"BY MR. ROBINSON: (TO MR. LEVIN)

Q. Mr Friedman asked you about the banks wanting to proceed with a transaction whereby they would convert their claim into equity, is that correct? That was in your deposition.

A. Yes.

Q. Okay. What was – how were they going to do that? What did they propose?

A. Exactly what you said earlier, that they would convert their $1.6 billion worth of debt into the equity of the company.

Q. They would take the stock, they wanted new stock issued and the old stock voided, is that correct?

A. I believe that's the way it works, yes.

Q. It was the banks that wanted that?

A. I also wanted it.

Q. Why did you want it?

A. We couldn't possibly pay off the debt. We didn't have the cash flow.

Q. So you traded the shareholders' interests for the debt?

MR. MILLER: Object to that question.

THE COURT: All right. Mr. Robinson, that's realy not — — it's not really relevant. The Shareholders' interest being dissipated is a function — — if the value is what it is, the fact that the share-holders may not have an interest is the function of the priority scheme and the way the entire corporate structure functions.

MR. ROBINSON: That hasn't been shown yet.

THE COURT: I realize that but — — I realize that from your vantage point it hasn't been shown and I haven't ruled on it, but that's part of argument; but whether you think it's fair or not, that is the corporate structure.

MR. ROBINSON: Well, we are talking about the valuation of assets here and that's critical to this particular proceeding, what was the valuation of assets and what will be on the date of confirmation.

THE COURT: That's what we had the testimony about.

MR. ROBINSON: I haven't heard any testimony that has put any value on those assets, the assets themselves, as well — — financial analysis, hypothesis, opinions, that's all we have had.

THE COURT: All right. You can make that argument. Mr. Erickson?

MR. ROBINSON: I have a few more questions for Mr. Levin.

THE COURT: Mr. Robinson, make sure they are relevant because I have given you and Mr. Erickson a considerable amount of latitude.

MR. ROBINSON:

Q. have you made any attempt whatever to sell Coleman as a going business, just Coleman?

A. I have not put Coleman on the market, but we are always responsive to any inquiries on any of our businesses.

Q. But you haven't put it on the market?

A. That's correct."

When Harvey Miller, Debtor's trial counsel, attempted to avoid having Jerry Levin testify and substitute Mr. Isko, Appellant spoke up and told the Court (Tr. p.129):

"I have subpoened Mr. Levin. I intend to ask him questions that are relevant to 1129 in the whole scope of 1129 and that will take some time."

After Mr. Miller denied that Mr. Levin was subpoened and there was a full explanation as to when and how that subpoena was served and the attempts to George Davis to have Appellant withdraw the subpoena and proceed on Greene and Levin's affidavits, the following exchange took place (Tr. p. 131):

MR. MILLER: We don't have an objection if he wants to call Mr. Levin as a rebuttal witness.

MR. ROBINSON: I want to call Mr. Levin as a witness for anything connected and relevant to 1129, the issues that are in this proceeding.

There can be no question that the Court understood my position with regard to the burden of proof and my intent to show that the plain language of the requirements of 1129 were not met and that Confirmation could not be legally ordered without the Bankruptcy Court

having a factual foundation for such findings. This was the position of Appellant from the time of first appearing in the case and was stated repeatedly in all pleadings and hearings throughout the case in both Bankruptcy and District Court. In every instance where Appellant tried to get into the facts set out at length in this memo and in the statement of facts in the Motion to Vacate, the Bankruptcy Court refused to permit questioning, with the bare statement such inquiry was "not really relevant", followed by the incomprehensible statement, "The shareholders' interest being dissipated is a function —— if the value is what it is, the fact that the shareholder may not have an interest is a function of the priority schemes and the way the entire corporate structure functions."

Appellant agrees that there was a priority corporate scheme involved in this case, but that it was certainly relevant to show "the way the entire corporate structure" functioned from the day of the purchases from M&F by Sunbeam.

Other points of obvious error and pre-judgment included:

1. Refusal of the Trustee in Bankrputcy and the Court to appoint an Equity Committee, without any evidence concerning asset value of all the holdings of the parent Sunbeam Corporation and long before the Confirmation Hearing itself.

2. Judge shopping by Debtor's counsel and further delaying the appellate process by threatening a spurious Motion to Dismiss as Moot, frantically working to carry out activities under an Order invalid on its face and known to be so, and filing the Moot motion only after such counsel was able to have Appellant's assigned judge changed and its selected judge assigned.

3. Attempting to separate the 39 allegedly separate bankruptcy cases from the total value of their parent Sunbeam Corporation, and concurrence in that activity by the Bankruptcy Court and the District Court below.

4. Dragging out the appellate procedure from December 6, 2002, date of Appellant's Notice of Appeal, to Judge Chin's Memorandum Decision of January 23, 2004. This long delay permitted Debtor's counsel and the banks to do all the things that Judge Chin relied upon in his decision that it would be too complicated to now try to undo what was done under the invalid Order. Judge Chin avoided the Motion to Vacate for over 9 months, and then never mentioned that motion that made everything done under the illegal POR moot in itself.

5. Judge Chin's decision erroneously stated the date of January 24, 2003 as the date of filing Appellant's appeal. That date is not correct. The appeal was filed December 6, 2002. However, on November 25, 2002, before Judge Gonzalez issued his Order of Confirmation, Appellant filed pleadings explaining in detail the total failure of any evidence to carry the Debtor's burden of proof required by Section 1129 and setting out the repeated and glaring errors of Judge Gonzalez during the Confirmation Hearing. Experienced bankruptcy counsel and the Lenders were fully aware of the risks they ran in proceeding ahead full bore to attempt to accomplish everything in the obviously invalid POR in the 12 days between December 6 when the Notice of Appeal was filed and December 18 when Debtor claimed the POR was "substantially completed". It is also significant that time to accomplish more under the invalid POR was given to Debtor's counsel through the period from the time the Notice of Appeal was filed until the time that Judge Chin finally decided the Motion to Dismiss as Moot some

15 months later, without ever discussing or even considering the issues raised in the record and in Appellant's Motion to Vacate.

Without even considering the value of the 39 subsidiaries that were excluded from the value of parent Sunbeam, the moneys siphoned off through "management agreements" with Coleman and M&F and its subsidiaries, the $146 million paid to M&F for the balance of Coleman stock, the payments to M&F in settlement of "disputes" related to the sale of Coleman to Sunbeam and the massive writing down on the books of Sunbeam of the value of the acquisitions, at the very least there is the $2.25 billion in equity parked in Coleman and the many other subsidiaries which should have been available to pay off the banks' debt of $1.6 billion and still leave a very comfortable cushion for Sunbeam operations.

In support of the statements herein that Judge Gonzalez' Order of Confirmation on its face lacks any legal validity, following are excerpts from pages 2, 3, and 4 of Appellant's MOTION TO VACATE CONFIRMATION ORDER:

Debtor's Second Amended Joint Disclosure Statement, beginning at page 48, item IX, VALUATION, discusses the Greene Liquidation analysis and states, "The Debtors have utilized MLBCo's valuation analysis for the purpose of determining value available for distribution to creditors pursuant to the Plan and the relative recoveries to creditors thereunder." It goes on to state as follows: "The estimated value does not purport to be an appraisal or necessarily reflect the value which may be realized if assets are sold. The estimated value represents a hypothetical enterprise value of the Sunbeam Group. Such estimate reflects the application of various valuation techniques and does not purport to reflect or

constitute an appraisal, a liquidation value or an estimate of the actual market value that may be realized through the sale of any securities to be issued pursuant to the Plan, which may be significantly different than the amounts set forth herein." (p. 49).

* * *

"MBLCo assumed and relied on the accuracy and completeness of all (i) financial and other information furnished to it by the Debtors and (ii) publicly available information. MLBCo did not independently verify managment's projections in connection with such valuation and no independent valuations or appraisals of the Debtor's assets were sought or were obtained in connection therewith."

* * *

"In addition, analyses relating to the value of the Debtor's businesses do not purport to be appraisals or to reflect the prices at which such business or the securities to be issued under the Plan will trade." (p. 50).

The following quote is from page 4 of Appellants' Motion to Vacate, following the above from Debtor's Disclosure Statement:

"All the references above are to the Liquidation Analysis of Mr. Greene, and which was stipulated on the record by Counsel for Sunbeam during Appellant's cross examination of Mr. Greene pointing them out, as not showing or being offered as evidence of the liquidation value of the assets required under Section 1129 (Tr. p. 88). It was also stipulated on the record, that if Mr. Frederick's liquidation analysis was based on Mr. Greene's Liquidation Analysis, as it was on its face in his affi-

davit, then it was also stipulated by Mr. Miller that it too showed no liquidation value of the assets as required under Section 1129 (Tr. 88). This fact was also recognized and acknowledged by the Court at pages 89 and 90 of the Confirmation Hearing transcript."

Despite the overwhelming evidence in the record indicated above, Judge Gonzalez' Order in paragraph GG., page 9, states as the basis for his finding of compliance with the explicit requirements of Section 1129:

"With respect to each impaired Class of claims or Equity Interests, each holder of a Claim or Equity Interest has accepted the POR or, *as demonstrated in the Frederick Affidavit and the Debtor's Liquidation Analysis annexed as Exhibit "F" to the Disclosure Statement,* will receive or retain under the POR on account of such Claim or Equity Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on the Effective Date." (Emphasis added).

Since Judge Gonzalez stated very clearly on the record that the only evidence in the record on the question of valuation of the assets came from the two witnesses, Greene and Frederick, it is quite clear that there is no such evidence of the Liquidation Value required for Confirmation and his bare statement in paragraph GG cannot make that so.

Respectfully submitted,

/s/ F.J. Robinson
Francis J. Robinson, Esq.
832 Milmar Road

Newtown Square, PA 19073
Phone: (610) 356-3382

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APPENDIX J

FRANCIS J. ROBINSON
Attorney At Law
832 Milmar Road
Newtown Square, Penna. 19073
(610) 356-3382

June 7. 2004

David Paris, Esq.
Supervisor, Staff Counsel
United States Court of Appeals
For the Second Circuit
United States Court House
40 Foley Square
New York, NY 10017

Re: Robinson v Sunbeam Corporation
Docket No. 04-1381-bk

Dear Mr. Paris:

It is not all clear as to how much of the record below has actually been transmitted to the Court of Appeals in this case. It does not even appear that Judge Chin's Memorandum Decision of May 14, 2004 was provided to this Court, or the corrections referred to in that decision forwarded.

Therefore, in order to fill in the record on the facts involving the 39 "affiliated Sunbeam Debtor cases" and the attempts to separate them from the Parent Sunbeam Corporation, attached is a "SUMMARY UPDATE" of the "SUMMARY OF POSITION" filed in my letter of April

28, 2004 and also enclosed in my facsimile of June 3 to you. As can be seen, the " "SUMMARY UPDATE" was sent to the Weil and Simpson firms on June 2, 2004, also by facsimile. A copy of this letter is also being sent, by facsimile, to Mr. Radin and to Mr. Pantaleo at their firms.

Sincerely,

/s/ F.J. Robinson
Francis J. Robinson, Esq.

By facsimile
06/07/04

FRANCIS J. ROBINSON
Attorney At Law
832 Milmar Road
Newtown Square, Penna. 19073
(610) 356-3382

June 2, 2004

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attn: Stephan Radin, Esq.
Diane Harvey, Esq.

Simpson, Thacher & Bartlett
425 Lexington Avenue
New York NY 10017
Attn: Peter Pantaleo, Esq.

Re: Robinson v. Sunbeam Corporation
Docket No. 04-1381-bk

Dear Addressees:

Since Mr. Radin appeared to have some confusion as to the existence of a separate Order of November 27, 2002 concerning the "affilliated Sunbeam Debtor cases", the enclosed SUMMARY UPDATE may be helpful in reviewing the record in thic case. Copies of the letters references in the SUMMARY are not included. They were previously either mailed directly to you or copies were made available and should be in your files.

Sincerely,

/s/ F.J. Robinson
Francis J. Robinson, Esq.

By Facsimile
CA217

SUMMARY UPDATE

The actions of Judge Gonzalez in the Bankruptcy Court and Judge Chin in the District Court, obviously in concert with the Debtor's counsel and their officers and directors and the Lenders, would be beyond belief but for the undisputed facts of record in all phases of this proceeding. The net result is that the value of 39 subsidiaries of the Sunbeam Corporation was "separated out" from the value of the parent and the parent and all its "Debtor Subsidiaries" were passed along, debt free, to the Lenders and Sunbeam officers and directors. That is, all but 1.5% of the stock that was given to unsecured bondholders and the Creditors' Committee to settle some unknown and undescribed "dispute".

This was started by the Bankruptcy Court and the U.S. Trustee in Bankruptcy declaring the legitimate and original stockholders' equity interests of no value. Then followed the issuing of new stock in exchange for the Lenders' $1.6 billion in claimed debt to them. Those actions were then acquiesced in by the District Court, which ignored its legal obligation to decide the *de novo* Motion to Vacate the Confirmation Orders and granted Appellee's Motion to Dismiss as Moot because it had "substantially completed" all the illegal acts permitted under the initially involved POR approved by the Bankruptcy Court in direct and on its face violation of the explicit statutory requirements of Section 1129 of the Bankruptcy Code.

Earlier, counsel for Debtor had claimed, in a motion given to the Bankruptcy Court for signature, that:

"The Chapter 11 cases of the Subsidiaries were administered separately from the chapter 11 case of the Sunbeam Corporation."

That was an outright misrepresentation of fact, concurred in by the Bankruptcy Court, despite clear evidence in the record and as as matter of law, to the contrary. Trial counsel, Harvey Miller, specifically stated at the outset of the Confirmation Hearing of November 20, 2002 (Tr. p.4) that:

"this is a noticed hearing to consider confirmation of the Chapter 11 Plan of Reorganization filed by Sunbeam Corporation in Case No. 01-40192 and in the affiliated Sunbeam Debtor cases A1 Realty Marketing of New York, Inc. et al, 01-40252 - 01-40290."

The value of "$660 million to $860 million" in the Dresdner Kleinwort Wasserstein Enterprise Valuation Analysis testified to by Mr. Greene and Mr. Frederick for the entire parent Sunbeam Corporation and its subsidiaries was stated by Mr. Miller to be the value of Sunbeam and all the "separate" cases. (Tr. p. 4: see also letter of September 25, 2003 from Appellant to Debtor's and Lenders' counsel, copy to Judge Chin, attached as Ex. A)

In a Motion dated October 3, 2003, George Davis of the Weil firm, in a Motion further extending a deadline, submitted for Judge Gonzelez' signature, stated:

"A final decree closing the Chapter 11 cases of the Subsidiaries was granted by this Court on October 1, 2003."

Appellant, in a letter to the Weil and Simpson firms, copy to Judge Chin, specifically objected to this attempt to separate the Sunbeam subsidiaries from the Parent as being beyond the legal authority of Judge Gonzalez (See Ex. B, attached).

Again, this was totally ignored by Judge Chin.

Then, on December 15, 2003, Appellant wrote directly to Judge Chin when another motion to extend was filed, repeating the now known to false and illegal statements:

"The Chapter 11 cases of the Subsidiaries were administered separately from the Chapter 11 case of the Sunbeam Corporation and have been closed." (See Ex. C, attached, letter Appellant to Judge Chin, December 15, 2003).

The "Sunbeam Debtor" cases referred to by Mr. Miller at page 4 of the hearing transcript, include the same subsidiaries in which Jerry Levin had "parked" the $2.25 billion of Sunbeam Corporation cash and carried it falsely on the books of Sunbeam as "Debt" for purposes of the programmed "bankruptcy". These were the same Sunbeam and Coleman subsidiaries included in Mr. Miller's "Debtor Cases" and purportedly covered in cases 01-40252 - 01-40290, in Judge Gonzalez other Order of November 27, 2002, of which Mr. Radin, in a recent phone call concerning correction of the record, denied knowledge.

Corrected copy

CA2/16

APPENDIX K

FRANCIS J. ROBINSON
Attorney At Law
832 Milmar Road
Newtown Square, Penna. 19073
(610) 356-3382

April 24, 2006

Ms. Roseann B. MacKechnie
Clerk of Court
United States Court of Appeals
For the Second Circuit
40 Foley Square
New York, NY 10007

Re: Robinson v. Sunbeam Corporation
Docket No. 04-1381-bk

Dear Ms. MacKechnie:

At the oral argument this morning, Chief Judge Walker asked me what remedies I would suggest if the class action and conspiracy charges were upheld and the Confirmation Order in the above case were held to be void.

In Robinson's Reply to Debtor's brief, filed on February 13, 2006, it was stated:

"Based upon the facts and the entire record, including the sworn testimony of Jerry Levin, John Frederick and Mr. Greene, the Continuing Conspiracy to Defraud charge has in no way whatever been contradicted and should be upheld by this Court. All that remains on that issue should be a hearing or procedure to establish damages, sanctions, or other possible protections or benefits for the stockholders owning at that time.

If there will be other actions taken by other Federal, State or local agencies, I believe that they need not be covered or considered in the decision in this appeal."

In further amplification in response to Chief Judge Walker's question, attached are 5 coopies of "Proposed Remedies and Damages" if the Court should decide on a further hearing concerning damages, sanctions, etc.

Respectfully submitted,

/s/ F.J. Robinson
Francis J. Robinson

Copies:
Stephen A. Radin, Esq.
Peter V. Pantaleo, Esq.

PROPOSED REMEDIES AND DAMAGES

Following the voiding of the Confirmation Orders in the Sunbeam case, among the remedies the Court should consider in restoring the equities of the Sunbeam stockholders are the following:

1. The banks and Morgan Stanley should forfeit the $1.6 billion debt, plus any fees, interest, expenses and any monies taken by them from Sunbeam, to be restored to Sunbeam.

2. Jerry Levin and MacAndrew and Forbes and its affiliates and principals repay to Sunbeam all sums paid to them by Sunbeam, before and after the sale of Coleman.

Jerry Levin and M& epay to Sunbeam all sums by which he reduced the value of Coleman and the subsidiaries after their sale to Sunbeam. Also, both Jerry Levin and M&F repay to Sunbeam the $146 million paid to M&F or its nominee for the 19½% of Coleman stock purchased long after Levin was in control of Sunbeam and had planned the so-called bankruptcy.

3. The Weil and Simpson firms repay to Sunbeam all fees, expenses and any other form of compensation received by them from Sunbeam in any way connected to the Sunbeam bankruptcy plan from the date of its inception by them and their clients, plus interest to date of repayment.

4. The Creditors' Committee Counsel repay to Sunbeam all fees and expenses received by them from Sunbeam or the banks, Morgan Stanley, Jerry Levin or the Weil and Simpson firms. While they may not have been an original part of the conspiracy to defraud the Sunbeam stockholders, they quite willingly joined the conspiracy and agreed to share in the spoils, as evidenced by the agreement set out in the ex parte hearing conducted by Judge Gonzalez on November 25, 2002 after the Confirmation Hearing had been concluded on November 20, 2002.

5. Jerry Levin, his "management team" and Directors, repay to Sunbeam all salaries, bonuses, expenses, fees and all other gross sums received by them from Sunbeam or its subsidiaries, including all profits from stock options, plus appropriate interest to date of repayment.

6. Void any and all transfer of assets from Sunbeam, its subsidiaries and holdings to any other entity or person, including the alleged sale to Jarden, before or after the Confirmation Hearing of November 20, 2002. Any and all consideration paid in such transactions should be forfeited and retained by Sunbeam.

7. Appoint a Conservator or Trustee, reporting to the Court, to select a CEO and management staff to replace the Levin team and propose a new, interim Board of Directors, all subject to approval of the Court.

8. Appoint a Master or Judge to conduct hearings to establish damages to the stockholders owning stock at the time of completion of the Confirmation Hearing of November 20, 2002, or the date the Confirmation Order was issued and the new stock issued. The amounts of punitive damages against all mentioned above should be considered in such hearing or hearings.

9. The Weil and Simpson firms, Bank of America, Wachovia, Morgan Stanley, M&F, Jerry Levin, the Directors and other involved management of Sunbeam should be jointly and severally held liable for all damages, including loss of value and profits in the Sunbeam stock held by shareholders at either the time of the Confirmation Order or such other time as the Court may deem appropriate.

10. Sanctions should be considered against the individual attorneys principally involved in carrying out the Continuing Conspiracy to Defraud the Sunbeam stockholders.

APPENDIX L

FRANCIS J. ROBINSON
Attorney At Law
832 Milmar Road
Newtown Square, Penna. 19073
(610) 356-3382

May 12, 2006

Ms. Roseann B. MacKechnie
Clerk of Court
United States Court of Appeals
For the Second Circuit
40 Foley Square
New York, NY 10007

Re: Robinson v. Sunbeam Corporation
Docket No. 04-1381-bk

Dear Ms. MacKechnie:

Attached is a copy of confirmation of delivery of my letter of April 24, 2006 to the Court in the above case. Attached to that letter was a copy of "Proposed Remedies and Damages" which was in detailed response to Judge Walker's question during oral argument and showed further exactly how Sunbeam could be restored to a much better, financially healthier company if Bankruptcy Code Section 1129(a) were to be followed and the uncontested and ignored Conspiracy to Defraud charges were properly addressed and decided by the Court. That document specified exactly how this Court could "order some effective relief" in the civil side of this case.

The purpose of this letter is to make sure that the letter of April 24, 2006 is not misplaced or otherwise made unavailable for future actions in connection with this case. As you should be aware, there have been many previous questionable activities that have arisen in connection with this case. Certainly, not the least of which was never providing the Court with copies of Robinson's brief and appendix, waiting over 5 months and then "dismissing" the appeal on a copy of an earlier Request for Extension of Time which had been refused filing by your office and signed by Motions Counsel purportedly acting for the Court.

My letter of May 6, 2006 was also sent Priority Mail, Signature Confirmation Receipt. I also trust that that letter, and all past and future documents filed, will be preserved in the Court's files for the same purpose as set out above. By copies to the Weil and Simpson firms, they and their respective clients are once again so advised.

It was only after Robinson sent copies of his brief and appendix, the Motion for Reconsideration, and other supporting documentation to each of the three Judges claimed to have authorized the dismissal that the panel reinstated the appeal and ordered Debtor to respond to Robinson's now aged brief and appendix.

There is no question that Robinson tried to keep the case in this Court strictly civil in nature, as evidenced by the statement in his letter of November 11, 2005 and repeated in his reply brief to this Court that "If there will be other actions taken by other Federal, State or local agencies, I believe that they need not be covered or considered in the decision in this appeal."

This case, just on the civil side, is a blatant case of the Court ignoring the plain and clear wording of the statute

regarding "in good faith and not by any means forbidden by law" and required liquidation value of *all* the corporate assets, ignoring the extreme conflicts of interest, false representations and letters to stockholders and the SEC, falsely carrying over $4 billion in cash as debt on Sunbeam books, and other similar activities referenced in the pleadings before both the District Court and this Court.

Faced with all those and other documented and sworn facts of record, this Court can only be said to be attempting to legislate new bankruptcy rules and to ignore years of contrary Circuit Court decisions, including its own, that require the burden of proof set out in Section 1129(a) before ruling that the Bankruptcy Court had the required statutory authority to confirm the POR.

Respectfully submitted,

/s/ F.J. Robinson
Francis J. Robinson

Copies:
Stephen A. Radin, Esq.
Peter Pantaleo, Esq.

APPENDIX M

FRANCIS J. ROBINSON
Attorney At Law
832 Milmar Road
Newtown Square, Penna. 19073
(610) 356-3382

May 3, 2006

Hon. John W. Walker
Chief Judge
U.S. Court of Appeals
For the Second Circuit
U.S. Court House
40 Foley Square
New York, NY 10007

Re: Robinson v. Sunbeam Corporation
Docket No. 04-1381-bk

Dear Judge Walker:

I am enclosing for your convenience a copy of my letter of April 24, 2006 to Roseann B. MacKechnie, Clerk of Court, including the attached "Proposed Remedies and Damages". The quote in the letter is found at page 4 of Appellant's Reply Brief, and is also found in my letter of November 11, 2005 to Judges Miner, Cabranes and Straub, which was also included as Exhibit A in Appellant's Supplemental Appendix filed with the Reply Brief on February 14, 2006.

My confidence factor in the Clerk's Office passing along to the Court all documents filed by me has been seriously eroded by my past experience in this case.

At this stage of the case, I want to make sure that all bases are covered.

Respectfully submitted,

/s/ F.J. Robinson
Francis J. Robinson

Copies:
Stephen A. Radin, Esq.
Peter Pantaleo, Esq.
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APPENDIX N

FRANCIS J. ROBINSON
Attorney At Law
832 Milmar Road
Newtown Square, Penna. 19073
(610) 356-3382

May 22, 2006

Hon. John W. Walker, Chief Judge
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

RE: Robinson v. Sunbeam Corporation
Docket No. 04-1381-bk

Dear Judge Walker:

Based upon the only two questions asked me at the oral argument on April 24, 2006, both by you, and the Summary Order date stamped April 26 and mailed to Florida on April 27, it would appear that my Appellant's Reply Brief and Appellant's Supplemental Appendix had not been provided to the Panel.

In view of my earlier experience with the Clerk's Office waiting over 5 months after I filed the brief and appendix in this case, then dismissing the appeal based on the claim of those documents not having been filed, just to make the record in this case clear for future references, I am enclosing copies of both the Reply Brief and the Supplemental Appendix for your information. Both documents were timely filed by Federal Express,

with the required number of copies, with confirmation of receipt.

Of particular interest is my letter to the Court of January 3, 2006 (Supp. App. Ex. C) referring to and quoting from the *ex parte* "Hearing" on November 25, 2002 at which counsel for the banks, the bondholders and Debtor agreed to a further division of the stockholders' equity to settle claims of the bondholders and dismiss those claims. This, among the many other actions in Bankruptcy Court and the District Court below, certainly falls within the definition of a case that "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." (Rule 10, Rules of the Supreme Court of the United Sates, pp. 5-6).

Respectfully submitted,

/s/ F.J. Robinson
Francis J. Robinson

Copies:
Clerk of Court
Stephen A. Radin, Esq.
Peter V. Pantaleo, Esq.

APPENDIX O

FRANCIS J. ROBINSON
Attorney At Law
832 Milmar Road
Newtown Square, Penna. 19073
(610) 356-3382

November 30, 2002

Clerk, U.S. Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004
By facsimile to (212) 668-2878

By: Sunbeam Corporation
Chapter 11 Case No. 01-40291 (AJC)

Dear Sir:

Enclosed please find my OBJECTION TO EX-PARTE HEARING AND STATEMENT CONFERENCE AND CHANGE OF PLAN for filing in the above matter. I consider this an emergency situation and, accordingly, am sending this to you for filing and delivery to Judge Gonzalez as soon as possible and hopefully before he acts with regard to the Weil, Gotshal & Manges proposed Order in this case.

Copies will also be served on interested parties by facsimile. An original will be placed in the U.S. Mail, Priority Mail, today, November 30, 2002 to your office and should be received before noon on Monday, December 2.

The emergency arises from the last minute delivery to me of the proposed Order just before noon yesterday by Federal Express.

Sincerely,
/s/ F.J. Robinson
Francis J. Robinson

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Chapter 11 Case No.
01-40291 (AJG)

In re SUNBEAM CORPORATION

Debtor.

OBJECTION TO EX-PARTE HEARING
AND SETTLEMENT CONFERENCE
AND CHANGE OF PLAN

Petitioner, a party in interest an an equity interest holder who appeared at the Confirmation Hearing scheduled for and concluded on November 20, 2002, hereby objects to the ex-parte "hearing" held between the bankers, the Sunbaeam Group lawyers and attorneys for the Creditors' Committee on November 25, 2002.

The proposed Order, prepared by counsel for the Debtor and the banks and apparently to be submitted to Judge Gonzalez for signature, along with a revised Plan of Reorganization, was delivered to me by Federal Express on Friday, November 29. That was the first notice of any such proceeding that I received. That proposed Order states erroneously on Page 3 that the Confirmation Hearing was "continued on November 25, 2002," and that "appearances of all parties" had "been noted in the record." Those statements are not accurate and are directly contradicted by the record.

At about 4:00 P'M. on November 20, Judge Gonzalez stated on the record that the Confirmation Hearing was going to be concluded on that day, even if we had to stay there until late that night. At about 7:30 P.M. that night, the Judge, after cutting short Petitioner's examination and cross examination of the key witnesses, Mr. Levin and Mr. Frederick, stated on the record that the hearing was concluded. He also stated on the record that any of the parties desiring to find out what his decision might be could call his chambers after 3:00 P.M. on the next Monday, November 25. There was no mention whatever of any continuation of the Hearing. Petitioner received no notice of any Hearing scheduled for November 25, nor any notice about any settlement with the Creditors' Committee and the new, modified Chapter 11 Reorganization Plan to be submitted on that late, if in fact it was submitted on that date or is to be submitted for signature as delivered to me today by Federal Express as a proposed Plan and Settlement Agreement.

Accordingly, that "hearing" should be declared a nullity and any decisions or settlements or deals made at that meeting between the banks the Creditors' Committee, and "acquiesced in" by Sunbeam management, should be voided and should not be approved by the Court signing the documents to be presented by the Debtor's counsel.

If there are to be such discussions and a drastic change in the Plan, those settlement discussions and Plan changes should not be dictated by the banks, with the partisan and conflicting participation of the Debtor's officers and their counsel. And Petitioner, as the only Attorney of Record representing himself and the interests of other equity interest stockholders, should have proper notice of what is proposed and time to appear and respond to

any such proposal. Prior to final Confirmation approval, the current stockholders have the only equity interest in the assets. The banks, as creditors, have no stockholder interests and no proper position to direct the decisions of the officers and directors of the Sunbeam Group.

How the banks can agree or direct a change in the Sunbeam Plan to give the bond holders a 1.5% equity interest in the New Sunbeam stock and accompanying assets and all can continue to claim that the stockholders' equity interests are of no value makes no sense whatever. This is particularly so when as recently as October 28, 2002, this Court had dismissed those claims as being without any value at all and dismissed them with prejudice.

All of these matters require further hearing and exposure, particularly here when the new Plan provisions attempt to eliminate any possibility of any future claim against the banks, the Sunbeam Group, all the officers and employees of both, all "experts" employed by them, and almost anyone else in any way connected with the Chapter 11 proceeding, by the current legal shareholders and equity owners of the Corporation or by anyone else, anywhere. From the time that the banks and Jerry Levin got together and agreed to take away the stockholders' equity interest by withdrawing the original Sunbeam Chapter 11 Plan and substituting the banks' Plan to give the stockholders' equity interests to the banks and Jerry Levin and other Sunbeam management people alone, (See Levin deposition November 13, 2002, pages 9-16 and pages 45-52, attached as Ex. A) this entire proceeding has been nothing but a conspiracy to defraud the stockholders of their equity interests. The brazen exculpation provisions prepared by Sunbeam and the banks' counsel for the Court's signature

are definitely evidence of a consciousness of guilt on their part, and an obvious effort to have this Court go along with that conspiracy. (See pp. 13, 14, & 15, proposed Order, Ex. B)

The Court should not condone such action, and there is nothing in the Bankruptcy Code or any other law that gives the Court the power to absolve or insulate them from a civil or criminal conspiracy. Their effort in this case should be summarily put to a halt.

/s/ F.J. Robinson
Francis J. Robinson, Esq.
832 Milmar Road
Newtown Square, PA 19073
Phone: (610) 356-3382

APPENDIX P

[SEAL]

U.S. DEPARTMENT OF JUSTICE
Office of the United States Trustee
Southern District of New York

33 Whitehall Street
21st Floor
New York, New York 10004

(212) 510-0500
Fax: (212) 668-2255

March 15, 2002

Daniel Ray Erickson
1291 Waterfall Dr.
Spring Hill, Fla. 35608

Re: Sunbeam Corporation
Request for the Formation of an Equity Committee

Dear Mr. Erickson:

We are in receipt of your letter dated February 21, 2002 requesting the appointment of an official committee of equity security holders in the above-referenced case. We are also in receipt of letters responding to your request from (i) Andrew K. Glenn, Esq. dated March 14, 2002, (ii) George A. Davis, Esq. dated March 13, 2002, and (iii) Peter V. Pantaleo, Esq. dated March 4, 2002. The responsive letters are attached hereto.

Based upon a review of the responsive letters, as well as a review of the pleadings filed in this case, including

the debtor's bankruptcy schedules, there does not appear to be equity in the debtor's estate, a conclusion which has also been reached by the official committee of unsecured creditors. Accordingly, the United States Trustee declines to form an official committee of equity security holders at this time.

Please call me if you have any questions.

Very truly yours,

CAROLYN S. SCHWARTZ
UNITED STATES TRUSTEE

By: /s/ Paul K. Schwartzberg
Paul K. Schwartzberg

cc: George A. Davis, Esq.
David M. Friedman, Esq.
Peter Pantaleo, Esq.